

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:

Application for Certification for)	Docket No.
the Tesla Power Plant Project)	01-AFC-21
_____)	

CALIFORNIA ENERGY COMMISSION
TRACY UNIFIED SCHOOL DISTRICT
BOARD ROOM
1875 WEST LOWELL
TRACY, CALIFORNIA

FRIDAY, SEPTEMBER 12, 2003

9:10 a.m.

Reported by
James Ramos
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

A P P E A R A N C E S

COMMITTEE MEMBERS PRESENT

Commissioner John L. Geesman, Presiding Member

HEARING OFFICER AND ADVISORS PRESENT

Susan Gefter, Hearing Officer

STAFF AND CONSULTANTS PRESENT

Darcie L. Houck, Esq., Staff Counsel
Jack Caswell, Project Manager

STAFF WITNESSES

John Kessler, Kessler and Associates, Project
Manager
Steven Bayley, City of Tracy
Kristine Uhlman, Miller Brooks Environmental, Inc.
Tony Mediati, Water & Soil Resources Unit
Vincent Wong, Zone 7

PUBLIC ADVISOR

Roberta Mendonca

APPLICANT

Scott Galati, Esq., Galati & Blek LLP

APPLICANT WITNESSES

Derrel Grant, Vice President, FPL Energy
Christopher Hansmeyer, Esq.
David Jones, CH2M Hill
Dwight R. Mudry, Tetra Tech FW, Inc.
Scott Busa, Project Director, FPL Energy
Duane McCloud

INTERVENORS

Robert (Bob) Sarvey, Community/Self

A P P E A R A N C E S

PUBLIC COMMENT

Susan Sarvey, Clean Air for Citizens and Legal
Equality

Carole Dominguez, Tracy's Regional Alliance for a
Quality Community (TRAQC)

Agirre Ena, Self/Community

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

I N D E X

	Page
Opening comments	1
Introductions	1
TOPICS	
Soil and Water Resources	2
Applicant Witness D. Grant	10
Direct Examination by Mr. Galati	10
Staff exhibits	20, 50
Cross-examination by Ms. Houck	21
Redirect by Mr. Galati	39
Recross by Ms. Houck	43
Recross by Mr. Sarvey	48
Applicant Witness C. Hansmeyer	51
Direct examination by Mr. Galati	51
Applicant Witness D. Jones	77
Direct examination by Mr. Galati	77
Applicant Witness D. McCloud	89
Direct examination by Mr. Galati	89
Applicant exhibits	97
Cross-examination of Mr. Hansmeyer by Ms. Houck	103, 125
Cross-examination of Mr. Jones by Ms. Houck	123, 135
Cross-examination of Mr. Grant by Ms. Houck	131
Cross-examination of Mr. McCloud by Ms. Houck	132
Redirect of Messrs. Jones, Grant, Hansmeyer and McCloud by Mr. Galati	135
Public Comment	140
Staff Witness J. Kessler	147
Direct Examination by Ms. Houck	148

I N D E X

TOPICS	Page
Soil and Water Resources (continued)	
Staff Witness T. Mediati	165
Direct Examination by Ms. Houck	166
Staff Witness K. Uhlman	167
Direct Examination by Ms. Houck	167
Staff Witness S. Bayley	169
Direct Examination by Ms. Houck	170
Cross-examination by Mr. Galati	188
Cross-examination of Mr. Kessler by Mr. Galati	194
Cross-examination of Ms. Uhlman by Mr. Galati	196
Staff Exhibits	200
Cross-examination of staff and Applicant witnesses by Mr. Sarvey	201
Intervenor Exhibits	205
Redirect by Ms. Houck	205
Staff Witness V. Wong	208
Direct Examination by Ms. Houck	208
Public Comment	211
Closing Comments	224
Adjournment	226
Reporter's Certificate	227

P R O C E E D I N G S

9:10 a.m.

HEARING OFFICER GEFTER: This is a continuation of evidentiary hearings on the Tesla Power Project. This morning we are going to take testimony on water. This particular session was scheduled originally for Intervenor CARE, Mike Boyd, to present his direct testimony on air quality, but he is unavailable today, so we will not be doing that.

We will hold all air quality testimony until the 18th, and we will proceed with testimony on water supply. Mr. Galati has several witnesses for us. Would you begin please? Oh, and also I'd like introductions again, so the record reflects who is present. Mr. Galati?

MR. GALATI: Hi, my name is Scott Galati, I represent the Applicant. Oh, this one doesn't have to be so close. On my left is Scott Busa, the Project Manager for the project. On my right is Darrel Grant, Vice President of Western Regional Development for FPL.

I also have Duane McCloud, who is the Project Engineer for the project. I have Dave Jones, who is a consultant to the project on

1 water. And I have Chris Hansmeyer, who is also a
2 consultant and attorney to the project on water.

3 HEARING OFFICER GEFTER: And staff?

4 MS. HOUCK: My name is Darcie Houck, I'm
5 staff counsel. To my left is John Kessler, Water
6 Consultant to the Energy Commission. Tony Mediati
7 to his left, and to Tony's left we have Kristine
8 Uhlman.

9 We also have Dick Anderson here today,
10 who is the Supervisor for the Water Unit. The
11 Project Manager, Jack Caswell, is also here. We
12 also have Air staff Brewster Birdsall here, as it
13 was originally scheduled to address air testimony.
14 And there's also representatives from the city
15 that staff will be sponsoring as witnesses.

16 HEARING OFFICER GEFTER: And Mr. Sarvey?

17 MR. SARVEY: Yes, Bob Sarvey.

18 HEARING OFFICER GEFTER: And as I
19 indicated, Mr. Boyd with CARE is not here today.
20 We are now ready for Mr. Galati to begin with the
21 Applicant's testimony.

22 MR. GALATI: The first thing I'd like to
23 do is ask my panel to be augmented with Mr. Darrel
24 Grant. Darrel is Vice President of Western
25 Regional Development for FPL. In light of the

1 Committee workshop yesterday, my offer of proof of
2 Mr. Grant's testimony will be on the definition of
3 availability.

4 It has two parts, it has a commercial
5 component, and it has a physical component. And I
6 want Mr. Grant to be able to testify on behalf of
7 the company. What are the commercial aspects of
8 availability that are important to making a
9 determination whether the water truly is
10 available.

11 HEARING OFFICER GEFTER: Okay. And Mr.
12 Grant was not listed as one of your witnesses when
13 you filed your list of witnesses with the
14 Committee?

15 MR. GALATI: No, he was not listed as a
16 witness, participated in the workshop, and in
17 light of the workshop we believe that this
18 evidence is important.

19 MS. HOUCK: Staff would object. We did
20 not receive any prefile testimony. Also, given
21 the offer of proof Mr. Galati indicated, it
22 appears that's really a legal issue as to whether
23 there's two components to what is or is not the
24 definition of "available."

25 Also, I don't believe, in any of the

1 Applicant's testimony, that we've addressed what's
2 an issue of commercial availability. I know
3 there's been discussion and issues raised about
4 what is a reasonable or comparable cost, but as
5 far as financing aspects or commercial
6 availability, that would be new information, and
7 staff would object to introduction of the
8 testimony, or in the alternative request written
9 file testimony and another date to address water
10 issues.

11 HEARING OFFICER GEFTER: Okay. Mr.
12 Galati, could you give us an offer of proof?

13 MR. GALATI: Yes, the offer of proof is
14 this. This is a expansion upon the concepts that
15 if water is physically available, but for some
16 reason, let's say the city does not pass a
17 resolution authorizing us to use it, that water
18 would not be available commercially.

19 That's not a physical. So most of the
20 issues that we want to talk about deal with
21 getting a city commitment. We think that it's
22 important for the Committee to know this. The
23 Committee requires us to use recycled water.

24 In order for me to make a legal argument
25 that we deserve a condition of certification that

1 would allow if a commitment does not come from the
2 city in a form that is able to finance and/or able
3 to construct the plant, that we would be free to
4 use some other water supply.

5 I can't make that argument unless I put
6 foundational facts in as to what the company
7 needs, and what the company believes is important
8 components of commercial availability.

9 MS. HOUCK: Staff would again object.
10 It would be speculation for Mr. Grant to assess
11 what the city would or would not be doing. I
12 don't think he could testify to any aspects of the
13 city's decision-making.

14 And again, I don't know that the issue
15 of commercial availability I think goes beyond the
16 scope of what's been in the testimony previously,
17 and it appears that there's other witnesses that
18 have filed testimony that could present a
19 foundation to any concerns the Applicant has
20 regarding uncertainty.

21 MR. GALATI: The last comments, if I
22 may, we heard yesterday in the workshop, and we
23 agree, the city representatives are not in a
24 position to be able to bind the city, but they can
25 make a commitment to tell us what they have

1 available, what they think they might be able to
2 do, but it was clear that we need a city
3 resolution or a city contract to go forward.

4 That is a willingness and an obligation
5 that would be created to serve. We are outside
6 the city of Tracy's jurisdiction, and there is no
7 legal obligation for them to give us water.

8 Without the city's commitment, we need to -- and
9 we believe the Committee needs to understand, to
10 be able to authorize that this actually is a water
11 supply for this project, that there is this
12 willingness to serve.

13 We recognize the city cannot make that
14 commitment today. We want a condition that would
15 confirm term, that would provide a confirmation
16 that there is an interim supply, as Mr. Bailey has
17 described.

18 Basically, what we want is a city
19 resolution on the basic terms that Mr. Bailey has
20 offered, and we want an understanding that if
21 government approvals of something are required
22 that are beyond our control or the city's control
23 and they can't be got -- for example, what if Mr.
24 Sarvey, the Intervenor here, is able to convince
25 the city of Tracy they don't want the project, so

1 they will not provide us water.

2 That water is unavailable. I call that
3 commercially unavailable, because although it may
4 be physically available, maybe sitting in a pond,
5 maybe putting in a tank, it is not available for
6 us to use.

7 And I think that what I just said was
8 all legal argument, that there is foundational
9 facts that Mr. Grant can describe what those
10 points are. So I can make that argument.

11 HEARING OFFICER GEFTER: I'll tell you
12 what, Mr. Galati, we're going to allow the
13 testimony, subject to strike. It sounds to me
14 very much like a legal argument. So we will allow
15 testimony and we will review it. And staff can
16 renew your objection. And you'll have the
17 opportunity to cross-examine as well.

18 MS. HOUCK: Thank you.

19 HEARING OFFICER GEFTER: Please begin.

20 MS. HOUCK: One clarification. Given
21 the objection, and you're going to allow Mr. Grant
22 to testify, can we do Mr. Grant's testimony first,
23 before we move into the panel and allow cross-
24 examination?

25 HEARING OFFICER GEFTER: That was my

1 intention.

2 MR. GALATI: That was my plan too. Can
3 I have the whole panel sworn at once please?

4 HEARING OFFICER GEFTER: Let's identify
5 the witnesses, and then have them sworn, that
6 would be best.

7 MR. GALATI: Darrel Grant, Duane
8 McCloud, Dave Jones and Chris Hansmeyer.

9 HEARING OFFICER GEFTER: Mr. Hansmeyer
10 is counsel to the water districts?

11 MR. GALATI: No, Mr. Hansmeyer is
12 counsel to FPL, and he previously filed testimony
13 on the contract issues related to the city of
14 Tracy and city of Rosedale-Rio Bravo, excuse me,
15 Rosedale-Rio Bravo, Kern County area.

16 HEARING OFFICER GEFTER: Well, I have a
17 problem with counsel testifying.

18 MR. GALATI: He's not testifying to any
19 legal conclusions. He is testifying to the facts
20 that underwent the Applicant's choosing of the
21 water supply, and he was the chief negotiator for
22 the terms of those contracts. We believe that we
23 need to prove we have a reliable water supply.

24 That issue has been raised by staff,
25 that reliability has several components, including

1 how we've contracted to get reliability from the
2 current county source. Mr. Hansmeyer is the best
3 person to testify to those areas.

4 HEARING OFFICER GEFTER: Well, okay, two
5 things. One is that Mr. Hansmeyer was involved in
6 negotiations. I would expect that that is
7 confidential, factual basis for where you are
8 today with your relationship with the water
9 districts.

10 And there may be a fine line between
11 testimony as to facts and testimony as to legal
12 advice. So given those concerns, we'll allow Mr.
13 Hansmeyer to testify, but if his testimony sounds
14 like legal opinion we're going to strike the
15 testimony.

16 MR. GALATI: I would also point out to
17 the Committee that we had this discussion at the
18 prehearing conference. Mr. Hansmeyer will not
19 testify outside his written testimony, which was
20 submitted and identified separately, so that
21 members, including staff, could have an
22 opportunity to make a motion to strike.

23 We haven't received any opposition to
24 that particular testimony. That's all I intend to
25 ask him about.

1 HEARING OFFICER GEFTER: Okay. And I'm
2 putting the Applicant on notice, with respect to
3 Mr. Hansmeyer's testimony. The witnesses may be
4 sworn, including Mr. Hansmeyer.

5 Whereupon,

6 CHRISTOPHER HANSMEYER, DUANE MCCLOUD, DAVID JONES

7 AND DARREL GRANT

8 were called as witnesses herein, and after first
9 having been duly sworn, were examined and
10 testified as follows:

11 HEARING OFFICER GEFTER: Okay, you may
12 begin with Mr. Grant.

13 MR. GALATI: Mr. Grant, please state
14 your name, spell it, tell us who you work for,
15 briefly describe your qualifications, and tell us
16 what your role is on this project.

17 MR. GRANT: Derrel Grant, D-e-r-r-e-l
18 Grant G-r-a-n-t. I'm a Vice President with FPL
19 Energy. I'm the Vice President for the Western
20 Region, and I've been with FPL Group for 13 years.

21 MR. GALATI: Mr. Grant, you participated
22 in the Committee workshop yesterday?

23 MR. GRANT: I did.

24 MR. GALATI: At that workshop a term was
25 used, called availability, do you recall that?

1 MR. GRANT: Yes I do.

2 MR. GALATI: And could you briefly
3 describe what, whether water would be physically
4 available, what that term means to a developer of
5 a project.

6 MR. GRANT: Physically available would
7 mean I can see the water, I can touch the water,
8 physically there.

9 MR. GALATI: Do you concede that if the
10 city of Tracy's reclaimed water project continues
11 on track and is not delayed that there will be a
12 physical availability of water at some point in
13 the future?

14 MR. GRANT: Based on what I heard from
15 representatives from the city, yes.

16 MR. GALATI: Is that the end of your
17 inquiry on developing a project, on whether water
18 is available for your project?

19 MR. GRANT: No it's not.

20 MR. GALATI: Could you expand on that?

21 MR. GRANT: In the industry we would go
22 one step further, and say is the water
23 commercially available, and -- do you want me to
24 expand on that?

25 MR. GALATI: Yes please.

1 MR. GRANT: Commercial availability
2 means those prudent terms that would be captured
3 in a contract. And I'll explain that a little bit
4 further by saying that if the water is physically
5 there, but for reasons -- I don't know what the
6 reasons could be at this stage -- we cannot come
7 to an agreement within a contract that's
8 reasonable, then commercially the water is not
9 available.

10 For all practical purposes it doesn't
11 exist.

12 MR. GALATI: And have you identified
13 those points that you believe would help make this
14 water supply commercially available?

15 MR. GRANT: I have.

16 MR. GALATI: Could you please briefly
17 describe them?

18 MR. GRANT: Yes. What I have here are
19 the four corners of what I would consider to be a
20 commercially available water supply. What would
21 be captured in a contract. First of all, the
22 representatives from the city and their --
23 everything they said was meaningful, but they
24 haven't got the authority to obligate the city, so
25 we would need a commitment from the city council

1 in the form of a resolution.

2 And this resolution would be a
3 willingness for the city to enter into a long-term
4 contract with the Applicant. We also have
5 additional provisions that we would want to see in
6 this. The representatives from the city also said
7 that they were willing to recommend that the
8 project may enter into a long-term contract.

9 And yesterday we spent some time talking
10 about what term, what we would be looking for her
11 is a minimum of a 35 year term contract, with the
12 option to renew. And again, the rationale for
13 having such a long-term contract is that this is a
14 long life asset, the economic life of this asset
15 runs anywhere from 40 to 50 years, so we would
16 want the water supply to match the life of the
17 asset.

18 This also plays very importantly into
19 the financing of the project, because the lenders,
20 they're going to want to see not only a water
21 supply for the term fo the load, but also a stop
22 piece at the end, just in case there are any
23 problems, they can recoup their investment.

24 Price is another item that we'd want to
25 see. And when I say see, the resolution would

1 have all these things captured in it. And
2 yesterday we spent some time there, and 20 years,
3 zero costs for the first 20 years, would be what
4 we'd be looking for, and then after that should be
5 somewhat sensitive to what city employees
6 mentioned.

7 We want to see a \$30 per year per acre-
8 foot for this water. And then we would have an
9 escalate, starting from year 21 through the life
10 of the project. Water is critical to this
11 project, and as we said yesterday, availability is
12 very important, and we'd want to see an interim
13 supply available for the water.

14 And this is going to be extremely
15 critical, because as we said before, the other
16 foot we have here is physical availability. So
17 interim supply to be able to support the project
18 for any reason that the plant doesn't meet it's
19 online objectives, the water treatment plan,
20 that's going to be critical.

21 And of course quantity, we have got to
22 have that hardwired. And for this project we're
23 looking for 5,900 acre-feet per year. And this,
24 again, is just confirming what staff placed on the
25 table.

1 Not only is quantity important, but the
2 quality of the water, because we have to design a
3 plant, because once you have designed a plant and
4 you've spent all the resources building this
5 plant, the quality of the water going to the plant
6 has got to remain in very narrow band.

7 And what we're looking for here is
8 recycled water -- let me put it slightly
9 differently, the water reaching our plant should
10 meet Title 22 restricted use, or no greater than
11 600 ppm total dissolved solids.

12 We have spent a lot of time -- and we
13 talked about this yesterday -- with our friends in
14 the south, and we understand all the regulatory
15 approvals that are required. At this moment we
16 don't fully understand what approvals are required
17 by Tracy to be able to perform.

18 And we're going to put this onus on the
19 city to ensure that all government approvals,
20 licenses or permits beyond what the CEC would have
21 in their license to us, that would be the city's
22 responsibility to provide that. We are not
23 unreasonable, and the project, we want to give the
24 city as much lead time to be able to provide this
25 water.

1 And we're recommending here that we
2 would give the city 18 months to provide the water
3 to the facility. This is going to be extremely
4 critical to support our schedule for construction
5 and financing.

6 And finally, we would like to see,
7 within the four corners of this commercial
8 availablilty template, some sort of enforcement
9 mechanism to cover not only the city's obligation,
10 but also our obligation.

11 Because if we gave you notice to say
12 that we're going to be coming online, and we don't
13 come online, we're big boys, and we will stand up,
14 and we will then cover the city for whatever harm.

15 And similarly we want to ensure that the
16 city recommends mechanisms, and we need to sit and
17 talk about that, so that if they don't come
18 online, and interim measures don't come true, then
19 we are protected.

20 I think that captures most of the
21 certain exhaustive list of what I consider the
22 four corners of commercial availability.

23 MR. GALATI: Mr. Grant, you discussed
24 this being embodied in some sort of commitment
25 from the city council. What do you envision if

1 the city council is not able to commit to provide
2 the water. What would you recommend happen?

3 MR. GRANT: Well, this is a binary
4 process. It's either the water is available --
5 and when I use the term available, physically or
6 commercially available. Or it's not.

7 And if it's not available then what I
8 would have to recommend is that we're given the
9 flexibility to be able to go to another source to
10 be able to provide the project with water so that
11 we can get on with our process.

12 There is also one other thing that I
13 wanted to mention, and I missed it. And that is,
14 within the -- we're asking that the city, 30 days
15 after we receive our permit, that they should at
16 that stage deliver to the project the city
17 resolution.

18 MR. GALATI: And Mr. Grant, why, I want
19 to ask you one question, you mentioned giving the
20 city 18 months to deliver the water. At what
21 point would that begin to run? Would the 18
22 months be from today?

23 MR. GRANT: No, it's not. The moment we
24 send a letter, notice, to the city, stating that
25 we are going to need the water, and commence with

1 our project development.

2 MR. GALATI: If the city were to develop
3 the resolution that you're requesting -- are you
4 requesting that a condition be enforced upon the
5 project, that with that commitment from the city
6 that you will come to the rest of the commercial
7 terms with the city and take that water?

8 MR. GRANT: Yes, my commitment.

9 MR. GALATI: With respect to the timing
10 after certification of wanting a commitment to the
11 city, could you explain to us why the timing is
12 important?

13 MR. GRANT: As I mentioned earlier, this
14 is a matter of process. And we have at the moment
15 a bird in the hand, and the gentlemen aren't here
16 today, but they will not be hanging out there
17 indefinitely. They are businessmen, and they will
18 just remove that option from us, and we'll be
19 harmed as a project, or we could be harmed as a
20 project.

21 MR. GALATI: When you said the gentlemen
22 who weren't here today, were you referring to the
23 Kern County --

24 MR. GRANT: Yes, the Kern County folks.

25 MR. GALATI: Do you have any further

1 testimony on availability?

2 MR. GRANT: No, I think that captures
3 what I would like to see in any commercially
4 reasonable document, in the form of a resolution.

5 MR. GALATI: I think it would be
6 appropriate to allow the staff and the parties to
7 cross-examine this witness before I go on to the
8 other subject matter. I'm done with my direct.

9 HEARING OFFICER GEFTER: Ms. Gefter?

10 MS. HOUCK: And I would just note that
11 most of Mr. Grant's testimony appeared to be more
12 opinion rather than based on specific, factual
13 questions as to what offer of negotiations he
14 would want with the city of Tracy.

15 And the aspects of the testimony related
16 to financing are not -- really my objection is to
17 relevance to those portions of the testimony. Mr.
18 Grant, you stated that you would want some
19 commitment from the city of Tracy, that they would
20 be willing to enter into an agreement with FPL, is
21 that correct?

22 MR. GRANT: Yes, in the form of a
23 resolution, yes.

24 MS. HOUCK: Are you familiar with the
25 city of Tracy's resolution dated 2002-488, dated

1 December 3rd, 2002?

2 MR. GALATI: Excuse me, counsel, is that
3 an exhibit, so I can show the witness?

4 MS. HOUCK: I don't know that it was an
5 exhibit, it was attached to staff's prehearing
6 conference statement.

7 MR. GALATI: May I have a moment?

8 HEARING OFFICER GEFTER: Off the record.
9 (Off the record.)

10 HEARING OFFICER GEFTER: Back on the
11 record. Ms. Houck, would you please describe the
12 document, and we will give it exhibit number --
13 it'll be exhibit 121.

14 MS. HOUCK: Okay. There's actually two
15 documents. One is the resolution, it's resolution
16 2002-488 of the city of Tracy, dated December 3rd,
17 2002. And the second document is the staff Report
18 10B, dated January 1st, 2003 that was prepared by
19 city of Tracy staff.

20 HEARING OFFICER GEFTER: That will be a
21 second document. That will be exhibit 122. And I
22 understand the parties have copies they can look
23 at, and also that we will get copies for the
24 Committee to have.

25 MS. HOUCK: Yes, thank you.

1 MR. GALATI: I don't currently have the
2 staff Report in front of me, I just have the
3 resolution, so --

4 HEARING OFFICER GEFTER: Off the record.
5 (Off the record.)

6 HEARING OFFICER GEFTER: Back on the
7 record. Mr. Galati now has a copy of the staff
8 report as well, so everyone is looking at exhibit
9 121 and exhibit 122.

10 MS. HOUCK: Are you familiar with the
11 city of Tracy resolution that's marked as exhibit
12 121?

13 MR. GRANT: I have a copy. I'm looking
14 at it now, yes.

15 MS. HOUCK: Did FPL have representatives
16 at the city council meeting where this resolution
17 was adopted?

18 MR. GRANT: Yes.

19 MS. HOUCK: Were you present at that
20 meeting?

21 MR. GRANT: I was not.

22 MS. HOUCK: But there was staff
23 authorized to speak on behalf of your company?

24 MR. GRANT: Yes.

25 MS. HOUCK: And this resolution that the

1 city adopted, did it indicate that the city has a
2 willingness to enter into negotiations to provide
3 reclaimed water to Florida Light and Power for
4 purposes of the Tesla Power Project?

5 MR. GRANT: It alludes to that, yes.

6 MS. HOUCK: Okay. Does it state
7 "whereas city staff has represented that the city
8 would be willing to assist Florida Light and Power
9 in construction of the recycled water pipeline
10 which could be city-owned and sized to deliver
11 recycled water to other locations within Tracy?"

12 MR. GALATI: Can you please point the
13 witness to where you're reading from?

14 MS. HOUCK: I'm reading -- let's see.
15 Let's start over, strike that.

16 HEARING OFFICER GEFTER: Well, I'm
17 sorry, Ms. Houck, we can read the document, and so
18 it speaks for itself, whether or not the witness
19 can read it is not relevant. The document speaks
20 for itself, it's a resolution of the city of
21 Tracy.

22 And the witness has testified that a
23 representative from FPL attended the meeting, and
24 apparently participated in discussion, is that
25 correct?

1 MS. HOUCK: So is FPL aware that the
2 city has already passed a resolution stating its
3 willingness to work with you to provide reclaimed
4 water?

5 MR. GRANT: Yes. However --

6 MS. HOUCK: Well, I, does the
7 resolution --

8 MR. GALATI: Can you let the witness
9 answer?

10 MR. GRANT: However, if you were to go
11 through the resolution, it does not capture all
12 the nine points I mentioned that we would require
13 to be able to demonstrate that the water is
14 commercially available.

15 MS. HOUCK: And I would enter an
16 objection that that's somewhat argumentative and
17 FPL really, this is not the proper forum for them
18 to be dictating terms of the contract.

19 And what we're trying to establish is
20 the fact that there is a willingness on behalf of
21 the city to provide the water and that that water
22 could be available, not what the specific terms of
23 the contract between the city and FPL would be.

24 MR. GALATI: I would object to that. If
25 the term is for one year and it's a million

1 dollars per acre-foot its showing the city is
2 willing.

3 HEARING OFFICER GEFTER: Okay. The
4 objection is sustained in part, and to the extent
5 that Mr. Grant is being argumentative with the
6 attorney, with Ms. Houck, that response is
7 stricken from the record, and the objection is
8 sustained. And we advise Mr. Grant to not argue,
9 just answer the questions.

10 MR. GRANT: I'm sorry.

11 HEARING OFFICER GEFTER: Thank you.

12 MS. HOUCK: Does the resolution indicate
13 that the city would be willing to provide any
14 interim water that may be necessary for the
15 project if the recycled water facility is not
16 online by the anticipated completion date of the
17 power plant?

18 MR. GRANT: Yes.

19 MS. HOUCK: Does the resolution indicate
20 that the city would be willing to assist FPL in
21 any approvals that would be needed for the
22 pipeline?

23 MR. GRANT: I don't know.

24 MS. HOUCK: Okay. If you look at the
25 ninth whereas on the resolution?

1 MR. GRANT: The ninth res says that,
2 yes.

3 MS. HOUCK: And does the resolution
4 indicate that the city is willing to enter in to
5 these negotiations to provide water, to provide
6 the actual water to FPL at no cost?

7 MR. GALATI: Could you point the witness
8 to where you're reading from?

9 MS. HOUCK: The eighth whereas in the
10 resolution.

11 MR. GRANT: That's what it says.

12 MS. HOUCK: Do you have a similar
13 resolution from Zone 7, as to an agreement to
14 provide water under similar terms as stated in
15 this resolution?

16 MR. GRANT: I don't know.

17 MS. HOUCK: Do you have any approvals or
18 resolution from Zone 7 agreeing to deliver water
19 to the project?

20 MR. GRANT: I don't know, I don't know.

21 MR. GALATI: There are members of the
22 panel who know that answer--

23 MR. GRANT: Who know that answer.

24 MR. GALATI: -- and can certainly answer
25 your question on cross.

1 MS. HOUCK: Okay. You indicated earlier
2 in your testimony that you would require a minimum
3 35 year contract, is that correct?

4 MR. GRANT: That's correct.

5 MS. HOUCK: Yesterday were you present
6 when gentlemen from Kern County testified here?

7 MR. GRANT: Yes.

8 MS. HOUCK: Did you hear testimony from
9 the Kern County representatives that they could
10 only provide a contract of water up until the year
11 2035?

12 MR. GRANT: Yes.

13 MS. HOUCK: And FPL testified earlier in
14 the proceedings that their online date could be no
15 sooner than June, 2006, is that correct?

16 MR. GRANT: That's correct.

17 MS. HOUCK: And if you subtract those
18 dates would you come up with a 29 year term
19 period?

20 MR. GRANT: Yes.

21 MS. HOUCK: So FPL is willing to accept
22 a contract for less than 35 years from the Kern
23 County water agencies?

24 MR. GRANT: There is a renewal of the
25 contract, there is a renewal.

1 MS. HOUCK: Has the city of Tracy
2 indicated they would be willing to allow for
3 provisions for renewal in any contract for
4 reclaimed water to the FPL project?

5 MR. GRANT: I don't know.

6 MS. HOUCK: And you were present during
7 the workshop yesterday?

8 MR. GRANT: I don't know, I didn't hear.

9 MS. HOUCK: And you indicated the water
10 would need to meet Title 22 standards, is that
11 correct?

12 MR. GRANT: That's correct.

13 MS. HOUCK: Is it your understanding
14 that the wastewater treatment facility that the
15 city of Tracy is currently expanding, it's water
16 will meet those standards by 2006?

17 MR. GRANT: I heard that yesterday from
18 a witness.

19 MS. HOUCK: Are you aware of any
20 requirements that the state would be putting on
21 the city to ensure they must meet those
22 requirements?

23 MR. GRANT: I've heard that from the
24 city.

25 MS. HOUCK: And you stated something to

1 the effect of the water meeting a standard of 600
2 TDS, is that correct?

3 MR. GRANT: That's correct.

4 MS. HOUCK: Could you state why the
5 water would need to be of that quality?

6 MR. GRANT: That has to do with the cost
7 to treat the water, and also for the design of our
8 plant.

9 MS. HOUCK: And is it your understanding
10 that the Kern County representatives will be
11 responsible for ensuring any agreements that are
12 needed to deliver water to the power plant will be
13 reached, such as any permits or easements or other
14 regulatory approvals from other agencies?

15 MR. GALATI: May I just object. You
16 said "agreements". If you mean permits --

17 MS. HOUCK: Permits or approvals, such
18 as approval of the aqueduct turnout and any
19 approvals needed by governmental entities.

20 MR. GRANT: Can you repeat the question,
21 please?

22 MS. HOUCK: Is it your understanding
23 that the Kern County water agencies will be
24 responsible to ensure that all regulatory or
25 government approvals necessary to deliver water to

1 the Tesla Power Project will occur?

2 MR. GRANT: Yes.

3 MS. HOUCK: And will it be at their
4 expense? Who's going to pay for the --

5 MR. GRANT: I can't remember, the
6 contract is very long, I can't remember all the
7 terms. But one thing is for certain is that they
8 would be responsible for getting all of that done.

9 MS. HOUCK: So they would actually be
10 getting all permits, they wouldn't be assisting
11 FPL?

12 MR. GRANT: The permits are in hand,
13 that's my understanding.

14 MS. HOUCK: My understanding yesterday
15 was that the testimony given by Kern County on
16 Zone 7 is that there were still a number of
17 permits and approvals necessary to deliver water
18 to the facility.

19 MR. GRANT: I thought there were
20 agreements between the parties, but I could be
21 mistaken.

22 MS. HOUCK: Were you present when Mr.
23 Wong of Zone 7 stated that it would take several
24 months to two years to receive all approvals or
25 authorizations to deliver water to the facility?

1 MR. GRANT: I thought that he was
2 referring to the agreement between Kern County and
3 the, and Zone 7. My understanding is that it was
4 just an agreement to transfer the water. It
5 wasn't any regulatory approvals, or anything like
6 that. And I also understood that that would take
7 just a couple of days.

8 MS. HOUCK: But were you present when
9 Mr. Wong stated it would take several months to
10 two years to receive all approvals necessary to
11 deliver water?

12 MR. GALATI: Again, I would object that
13 the witness has just stated he believed that Mr.
14 Wong stated something different than as you
15 characterized it. If you want to say "an
16 agreement", then he'll probably say yes.

17 MS. HOUCK: Did Mr. Wong or the Kern
18 County indicate there were any other approvals by
19 other agencies such as DWR that would be needed in
20 order to deliver water to the Tesla Power Project?

21 MR. GRANT: Yes.

22 MS. HOUCK: And have those approvals
23 been completed yet?

24 MR. GRANT: No.

25 MS. HOUCK: And would those approvals

1 also include approval of design for the turnout
2 that would need to be constructed?

3 MR. GRANT: I would assume so.

4 MS. HOUCK: And has the design for that
5 turnout been prepared or submitted to DWR?

6 MR. GRANT: I don't know.

7 MS. HOUCK: You indicated that you would
8 want some condition stating that the project, that
9 the city of Tracy would have to guarantee
10 providing water within 18 months of some sort of
11 agreement with the city that you would use the
12 water, is that correct?

13 MR. GALATI: I would object. It
14 mischaracterized the testimony -- he said "after
15 giving notice that he wants the water."

16 MS. HOUCK: Okay. You indicated that
17 you would want some commitment that the water
18 would be provided within 18 months of giving
19 notice that -- and what were your words again, Mr.
20 Galati?

21 MR. GALATI: Mr. Grant, can you refresh
22 her memory as to what you testified regarding the
23 notice?

24 MR. GRANT: 18 months after we notice
25 the city that we need the water, then they'll be

1 obligated to either provide us with wastewater
2 from the facility or some interim water.

3 MS. HOUCK: So that would include any
4 interim water that the city would be committed to
5 provide?

6 MR. GRANT: That's correct.

7 MS. HOUCK: Do you know how long from
8 today or from the time you sign, potentially reach
9 an agreement with Zone 7, they would be able to
10 deliver water to the facility?

11 MR. GRANT: My understanding is that the
12 water is available today.

13 MS. HOUCK: So you believe Zone 7 could
14 deliver the water today if the plant were
15 operational?

16 MR. GRANT: If the necessary agreements
17 that you asked about earlier were in place the
18 water could be delivered, yes.

19 MS. HOUCK: Do you know when those
20 necessary agreements will be in place?

21 MR. GRANT: No. But within a short
22 period after negotiations start. Yesterday I
23 gleaned from -- what a member of the panel said
24 was within a few days.

25 MS. HOUCK: So you're not certain when

1 the water could be delivered to the Tesla Power
2 Project?

3 MR. GRANT: Technically you're correct,
4 yes.

5 MS. HOUCK: What sort of enforcement
6 provisions to cover mutual obligations of FPL or
7 the water provider are included in your contract
8 with Kern County?

9 MR. GRANT: I don't understand. You're
10 going to have to refresh my memory.

11 MS. HOUCK: You indicated earlier in
12 your testimony that you would want certain
13 enforcement provision to cover either the city's
14 obligations or your obligations to one another in
15 the event that the water was not available or that
16 you did not choose to utilize the water, is that
17 correct?

18 MR. GRANT: That's correct.

19 MS. HOUCK: Are there similar provisions
20 in the proposed contract you have with the Kern
21 County representatives?

22 MR. GRANT: There are -- yes, there are
23 some conditions in the contract, yes.

24 MS. HOUCK: And what are those
25 conditions?

1 MR. GRANT: I would have to refresh my
2 memory.

3 MR. GALATI: I do have a witness who can
4 tell you those.

5 MS. HOUCK: And you indicated you would
6 want an additional resolution from the city of
7 Tracy within 30 days of receipt of this permit?

8 MR. GRANT: That's what we have on the
9 table, yes.

10 MS. HOUCK: And has Florida Light and
11 Power provided an official request to the city of
12 Tracy for service of the reclaimed water?

13 MR. GRANT: I don't know. Someone else
14 on the panel would be able to answer that. But I
15 don't want to seem argumentative, but because we
16 are in negotiations I think that should imply that
17 we're interested in getting water from them.

18 MS. HOUCK: So it would be your
19 representation that FPL is currently in good faith
20 negotiations with the city to provide reclaimed
21 water services to the project?

22 MR. GRANT: That's correct.

23 MS. HOUCK: And if reasonable terms that
24 would be accepted within standard practice could
25 be reached with the city you would utilize the

1 reclaimed water?

2 MR. GRANT: That's correct. Reasonable
3 terms, and I outlined what I consider reasonable
4 earlier.

5 MS. HOUCK: Would reasonable terms that
6 would be considered consistent with some other,
7 similar contracts that other power plants have
8 entered into with municipal entities for reclaimed
9 water be considered reasonable terms that you'd be
10 willing to enter into?

11 MR. GRANT: I've never perused any of
12 those contracts. I don't know if they are
13 reasonable or not.

14 MS. HOUCK: Just one moment.

15 HEARING OFFICER GEFTER: Off the record.
16 (Off the record.)

17 HEARING OFFICER GEFTER: Back on the
18 record.

19 MS. HOUCK: How many times have you met
20 with the city of Tracy to discuss possible service
21 of reclaimed water?

22 MR. GALATI: Ms. Houck, I have a witness
23 on that matter who can testify. It's in our pre-
24 written testimony. I'll let Mr. Grant answer how
25 many times he met, but I can answer that question.

1 MS. HOUCK: Has Mr. Grant met with the
2 city or discussed the issue of reclaimed water
3 service?

4 MR. GRANT: No I have not.

5 MS. HOUCK: Also, going back to the 18
6 month provision regarding within 18 months of a
7 request to utilize the water, would that mean you
8 want the water within 18 months of beginning
9 construction, 18 months from receiving your
10 permit, or when would be a reasonable time for FPL
11 to submit this request to the city of Tracy for
12 delivery of the water?

13 MR. GRANT: That -- I can't answer that
14 today, because there are a number of moving parts
15 here. Definitely one of the complicating factors
16 here is to be able to finance the project, because
17 we would need to have the lenders agree to loan
18 funds, and then we'd need to work all of that out,
19 so it's very difficult for me to answer that.
20 It's impossible for me to answer that today.

21 MS. HOUCK: And are you familiar with
22 the staff report that the city of Tracy prepared
23 for the city council's review, discussing
24 potential terms that the city would be willing to
25 agree to?

1 HEARING OFFICER GEFTER: I'm sorry, Ms.
2 Houck, which staff report?

3 MS. HOUCK: That was exhibit 122.

4 MR. GRANT: No I'm not, I'm seeing it
5 for the first time.

6 MS. HOUCK: Okay, would you want to take
7 a minute to review -- I guess, looking at the
8 heading titles, are those reasonable components
9 that would be included in a contract for water
10 service?

11 MR. GRANT: It's definitely not an
12 exhaustive list. It has a few of the terms that
13 one would normally see in a contract, yes.

14 MS. HOUCK: Okay. Do you believe, given
15 the information you've reviewed from the city and
16 the information you've indicated you would want to
17 see in a contract, that it would be possible for
18 the city and FPL to come to an agreement for water
19 service on this project?

20 MR. GRANT: We are motivated to
21 negotiate with good faith with the city, to ensure
22 commercial availability. To the extent that the
23 city is willing to negotiate in good faith and
24 they can capture, we can capture some of the
25 salient points, nine salient points that I just

1 mentioned, I don't see why we wouldn't be able to.

2 MS. HOUCK: Okay, now again, going back
3 to the 18month term, it seems -- given the number
4 of things you indicated are up in the air -- it's
5 kind of vague as to when that term would begin for
6 your request for water. Would there be any
7 situation where FPL would require the city to
8 provide water before it's actually needed for the
9 Tesla Power Plant?

10 MR. GALATI: Can you repeat that?

11 MS. HOUCK: I mean, is there any
12 situation where you would potentially request the
13 water, say 18 months from the day you get your
14 permit issued, but not necessarily begin
15 construction until four years later, or something
16 to that --

17 MR. GRANT: No, no. But, however, the
18 day we start commercial operation, or COD, isn't
19 the day that we'd need the water. We'd need the
20 water prior to that to do startup and other things
21 on the project. And remember, it's a 24 month
22 construction schedule, so --

23 MS. HOUCK: So at what point within that
24 schedule would you need water to be provided?

25 MR. GRANT: I would have to defer that

1 to another member of the panel.

2 MS. HOUCK: I have no further questions
3 at this time.

4 HEARING OFFICER GEFTER: Do you have
5 cross-examination, Mr. Sarvey?

6 MR. SARVEY: No questions.

7 HEARING OFFICER GEFTER: Do you have
8 redirect?

9 MR. GALATI: Yes I do. Mr. Grant, the
10 city resolution marked 121, do you believe that is
11 a sufficient commitment to define commercial
12 availability, in your mind, to a lender?

13 MR. GRANT: Definitely not.

14 MR. GALATI: Do you believe that it's --
15 with the recommendations that you outlined, sub to
16 resolution, with those as modified by those
17 recommendations, would be sufficient to define
18 commercial availability?

19 MR. GRANT: It would go a long way
20 leading to defining commercial availability, yes.

21 MR. GALATI: And if such a resolution
22 were modified in accordance with that, would you
23 be obligated to use the city of Tracy's reclaimed
24 water?

25 MR. GRANT: Yes.

1 MR. GALATI: And would you be willing --
2 can you tell us why you weren't asking for an
3 actual contract, instead, you were asking for a
4 resolution?

5 MR. GRANT: Because even if I had a
6 contract I would still need that contract to be
7 approved by the city, and I thought it would make
8 a lot of sense to at least get the four corners of
9 a deal hardwired, and then having the city have
10 some time to deliberate on this, and then we'd be
11 able to, in the form of a resolution, commit.

12 Then we would then go and do a contract.

13 MR. GALATI: With respect to giving the
14 notice that you wanted the water, do you believe
15 that that would be before or after you actually
16 had a contract with the city?

17 MR. GRANT: It would be after I have a
18 contract with the city.

19 MR. GALATI: So, the steps would be
20 you'd ask the city to adopt a resolution more
21 specific than the one it has. That would be step
22 one. Step two would be negotiating in good faith
23 to get to a contract.

24 And step three would be you give notice
25 when you actually want the water, and they have 18

1 months to perform, is that --

2 MR. GRANT: That's correct.

3 MR. GALATI: May I have a moment to
4 caucus?

5 HEARING OFFICER GEFTER: Off the record.
6 (Off the record.)

7 HEARING OFFICER GEFTER: Back on the
8 record.

9 MR. GALATI: Mr. Grant, when would the
10 commitment to use the reclaimed water basically be
11 memorialized or -- when do you see communicating
12 FPL's commitment to use that recycled water? Is
13 that today with your testimony?

14 MR. GRANT: Partially there, but the way
15 I would see this unfolding is -- well, let me back
16 up by stating that it would be maybe good practice
17 for the city at this stage to start their process
18 to get this resolution, so that 30 days after I
19 receive my license then the resolution would be in
20 place.

21 I'd be obligated to negotiate in good
22 faith with the city. And once we have a contract
23 I guess we would be 90 percent there.

24 MR. GALATI: Would you believe that
25 after that resolution, with such a condition that

1 you're proposing, you'd be committed to using the
2 recycled water?

3 MR. GRANT: Yes, we would be committed.
4 It would give us the necessary protection that
5 we're looking for in defining commercial
6 availability.

7 MR. GALATI: Is the purpose of the
8 resolution to incorporate the recommendations of
9 staff at the city to actually be the will of the
10 city council?

11 MR. GRANT: That's exactly it, the
12 willingness to provide the water within the four
13 corners of the structure outlined.

14 MR. GALATI: I have no further redirect.

15 HEARING OFFICER GEFTER: Do you have
16 recross?

17 MS. HOUCK: Yes, I have a couple of
18 questions, and I would also ask to reserve the
19 right to ask additional questions to the witness
20 after testimony from other members of the panel,
21 as some of the questions I ask Mr. Grant he was
22 not able to answer, and I may have followups for
23 him once he hears those answers from other
24 members.

25 HEARING OFFICER GEFTER: That's fine.

1 Mr. Grant can remain on the panel of witnesses.

2 MS. HOUCK: I would ask -- Mr. Grant,
3 the terms you've outlined today, prior to today
4 has FPL ever dictated these types of terms to be
5 required in contracts for water service?

6 MR. GRANT: I'm going to -- I don't
7 know. I'm going to ask other members of the panel
8 to address that issue.

9 MS. HOUCK: I thought it wa my
10 understanding that Mr.Galati wanted Mr. Grant to
11 testify because that was his expertise and
12 knowledge was in the process of how FPL conducts
13 its business, and what it needs to ensure that the
14 water is both commercially and physically
15 available?

16 MR. GALATI: That's exactly right. You
17 asked him if those have been communicated. He
18 doesn't know.

19 MS. HOUCK: I mean, in general, has FPL
20 required these conditions in all contracts to
21 serve?

22 MR. GRANT: Yes, these are just prudent,
23 commercial, the way we do business, yes.

24 HEARING OFFICER GEFTER: I need
25 clarification on the last two answers. They are

1 directly contradictory to the same question. So
2 would you rephrase -- I'm sorry, I'm striking the
3 last two answers, and I'd like you, Ms. Houck, to
4 ask the witness again, and that would be your
5 answer on the record.

6 MS. HOUCK: Has FPL, prior to today,
7 dictated these same terms for all of their
8 contracts that provide water to them? Are these
9 standard terms that FPL requires in all contracts
10 for water?

11 MR. GRANT: No. We require more.

12 HEARING OFFICER GEFTER: And again,
13 that's a very general question, and more
14 specifically the question could be framed "for
15 reclaimed water from municipalities."

16 MS. HOUCK: Would you require these
17 terms in all contracts with municipalities for
18 reclaimed water?

19 MR. GRANT: At a minimum, yes.

20 MS. HOUCK: And have you in the past, in
21 the past have you required these terms when
22 entering into contracts for reclaimed water?

23 MR. GRANT: When you say that do you
24 mean FPL Group as a company, or Derrel Grant
25 working on the west coast? I'm not too certain

1 what you're asking.

2 MS. HOUCK: To your knowledge, has FPL
3 required these conditions in previous water
4 contracts with municipalities for reclaimed water?

5 MR. GRANT: On water contracts, yes.

6 MS. HOUCK: And these conditions are all
7 encompassed in your contract with Kern County?

8 MR. GRANT: I'm going to ask another
9 member of the panel to answer that question.

10 HEARING OFFICER GEFTER: Is your answer
11 "I don't know?"

12 MR. GRANT: I don't know.

13 MS. HOUCK: So you don't know if FPL
14 requires these terms in every contract for water
15 service?

16 MR. GALATI: Can I ask for some
17 clarification, I think that there's some -- when
18 you say "these terms" -- are you asking for zero
19 price, certain escalation costs, that specificity?
20 Or the terms of price, quantity, quality as a
21 concept?

22 MS. HOUCK: The specific terms that Mr.
23 Grant stated he would have to have.

24 MR. GALATI: And that would be -- so you
25 are referring to zero cost for reclaimed water, --

1 MS. HOUCK: I'm talking about the
2 commitment of authority to provide the water,
3 similar resolutions in place that, the identified
4 price and quality and the requirement regarding
5 obtaining easements, and the 18 month provision,
6 the enforcement clause, and then the 30 days after
7 receipt requirements.

8 MR. GALATI: And again I would ask you,
9 I think it would be helpful for the record if you
10 would ask him about each one of those terms, and
11 put it in the form of a question that said do you
12 require price to be in the resolution, or are you
13 asking do you require zero dollars to be in the
14 resolution.

15 Because I think he's answering two
16 different questions here. When you say "terms" he
17 may be thinking of price instead of zero.

18 HEARING OFFICER GEFTER: Okay. Mr.
19 Galati, I think we're way afield here. As I
20 understand the question from Ms. Houck, she wants
21 to know if the general framework that Mr. Grant
22 laid out for an agreement with the city for
23 delivery of reclaimed water, if that program is
24 included in other contracts that FPL has signed
25 with municipalities that provide reclaimed water

1 for natural gas-fired power plants.

2 Okay, we've limited it because that's
3 what we're looking at here. And if you can answer
4 that question, you can answer yes or no.

5 MR. GRANT: Yes.

6 HEARING OFFICER GEFTER: And then, if
7 that's the case -- and this is not necessarily a
8 requirement, but perhaps that sort of contract
9 could be provided during the course of
10 negotiations with the city to indicate to them
11 what you're looking for.

12 And I'm just putting that out there,
13 it's's not a question or a requirement.

14 MR. GRANT: That's not a problem, I'll
15 just have to check on confidentialities, but
16 that's not a problem.

17 MS. HOUCK: Are there any such
18 agreements in place today?

19 MR. GRANT: Yes, we have other assets
20 that use waste water.

21 MS. HOUCK: And can you provide copies
22 of those agreements to the city to discuss during
23 your negotiations?

24 MR. GRANT: Yes.

25 MS. HOUCK: And will you be requiring --

1 MR. GALATI: I need to just interject,
2 there's a clarification to the record. He
3 answered the question the first time subject to
4 checking on confidentiality. And then you asked
5 him the same question, and he forgot to say
6 "subject to confidentiality."

7 MS. HOUCK: And will you be requiring a
8 similar resolution from Zone 7 within 30 days of
9 receiving your permit for -- it's my understanding
10 from the testimony yesterday, Zone 7, the board
11 for Zone 7 would need to formally adopt any
12 agreement between the city and Zone 7 to deliver
13 the water, is that correct?

14 MR. GRANT: That's correct.

15 MS. HOUCK: Would you be requiring the
16 same conditions with Zone 7 that they adopt this
17 resolution within 30 days after you receive your
18 permit?

19 MR. GRANT: We haven't reached that
20 point as of yet.

21 MS. HOUCK: Okay, so you haven't reached
22 that point. Okay. Thank you.

23 HEARING OFFICER GEFTER: Mr. Sarvey, you
24 have a question?

25 MR. SARVEY: Yes. The fourth item in

1 this resolution states --

2 HEARING OFFICER GEFTER: You're
3 referring to exhibit 121?

4 MR. SARVEY: 121, yes. It says "whereas
5 city staff recognizes that the community does not
6 support the proposed Tesla Power Project due to
7 air quality concerns" -- does that firm up in your
8 mind that, although the city council may support
9 the recycled water, that the community does not
10 support this project due to air quality concern?

11 HEARING OFFICER GEFTER: I'm going to
12 move to strike, that's not relevant to the
13 testimony.

14 MR. SARVEY: It is, because Mr. Galati
15 brought up the will of the city council, and
16 earlier they brought up the fact that the citizens
17 might mount an effort at the city council to block
18 this, and I think it's fully relevant.

19 HEARING OFFICER GEFTER: That's
20 speculative. You can ask another question.

21 MR. SARVEY: That's all I have.

22 HEARING OFFICER GEFTER: Thank you. Mr.
23 Galati, do you have any exhibits that you'd like
24 to identify with respect to Mr. Grant's testimony?

25 MR. GALATI: No, I have no exhibits with

1 respect to Mr. Grant.

2 HEARING OFFICER GEFTER: All right. Ms.
3 Houck, would yo like to offer exhibits 121, 122
4 into the record.

5 MS. HOUCK: Yes.

6 HEARING OFFICER GEFTER: Are there any
7 objections to receiving those documents? Mr.
8 Galati?

9 MR. GALATI: No objection.

10 HEARING OFFICER GEFTER: Mr. Sarvey, do
11 you have objection to those documents?

12 MR. SARVEY: No objection.

13 HEARING OFFICER GEFTER: Okay. Exhibits
14 121 and 122 are received into the record. Mr.
15 Galati, do you have additional witnesses on water?

16 MR. GALATI: Actually, I do. They've
17 been previously sworn. At this time I'd like to --
18 the only area, if I could comment, the only area
19 that is in dispute is in the area of water
20 resources.

21 And since soil and water resources are
22 combined for this topic would it be okay with
23 staff to accept a portion of soil and resources
24 upon declaration of Amanda Johnson in our
25 testimony. Just to summarize that testimony, it

1 says "we agree with everything you say."

2 MS. HOUCK: Staff has no objection to
3 that.

4 MR. GALATI: I didn't think they would.
5 Since it is attached to another exhibit I'll move
6 that in at a later time.

7 HEARING OFFICER GEFTER: Okay. And what
8 exhibit number is that?

9 MR. GALATI: I apologize, that's exhibit
10 45. Mr. Hansmeyer, can you please briefly
11 describe -- first, briefly state for the record
12 your name, who you work for, what your
13 qualifications are, and briefly describe your role
14 in the project as it relates to water resources?

15 MR. HANSMEYER: Yes. My name's
16 Christopher Hansmeyer, the last name is spelled H-
17 a-n-s-m-e-y-e-r. I'll start with my professional
18 educational background. My educational background
19 is, my undergraduate degree is in Natural Resource
20 Planning and Management from Humboldt State
21 University, where I had a Bachelor of Science
22 degree.

23 I then spent eight years in the fields
24 of architectural design and engineering. A
25 dominant portion of the work that I performed

1 during that time was site analysis and site
2 investigation in the fields of soils, range
3 management, forestry, hydrology.

4 I then attended the University of
5 California at Berkeley and obtained my law degree
6 with an emphasis in environmental law. Since that
7 time I've been with the firm of Allen, Matkins,
8 Lock, Gamble and Mallory in San Diego, California,
9 for the past five years.

10 Four months ago I left Allen, Matkins to
11 set up a private consulting practice, and I am now
12 a sole practitioner in the field of water
13 resources and land use development in San Diego.
14 My association with this project, if you want me
15 to go forward --

16 MR. GALATI: Yes please.

17 MR. HANSMEYER: My association with this
18 project began back in late 2000, early 2001.
19 Allen, Matkins was retained by FPL Energy to
20 perform a variety of services. Among those
21 services was to source and identify potential
22 suppliers of water for a potential power plant now
23 known as the Tesla Power Project.

24 To then conduct due diligence on both
25 the availability and reliability of those water

1 supplies, and then ultimately to negotiate and
2 come to contract with the suppliers of water on
3 behalf of the project.

4 At the start of this process, this was
5 the first CEC process power plant that I had
6 gotten involved in. So I did a bit of research.
7 I went to the Energy Commission website. I
8 started to do research on the type of things the
9 Energy Commission looks to in supplying
10 reliability and proving up a water supply to the
11 Energy Commission for the purposes of getting
12 plant approval.

13 And during that process I reviewed
14 Energy Commission decisions, pending siting cases,
15 as well as resolution water policy 7558. I think
16 that's particularly relevant because what I did in
17 sourcing water for this plant is I used water
18 policy 7558 and -- I apologize, it's in the FSA,
19 it was also I believe in the AFC.

20 It's a policy that was established --

21 MS. HOUCK: I would object. This
22 testimony applying to policy and addressing his
23 legal analysis as to why he looked for certain
24 water sources, and that's not factual.

25 MR. HANSMEYER: If I could respond.

1 It's not the justification for why I looked, it's
2 an --

3 MS. HOUCK: I would object to the
4 witness countering my objection.

5 HEARING OFFICER GEFTER: Yes, okay, see,
6 that's the difficulty of having counsel testify.

7 MR. HANSMEYER: I'm like a caged tiger,
8 I've been getting stuck all morning.

9 HEARING OFFICER GEFTER: All right. The
10 objection is sustained. You don't need to get
11 into that you relied on this particular policy and
12 why you relied on it.

13 MR. HANSMEYER: Okay. So what I did was
14 I set out to find a reliable and available supply
15 for the power plant. I don't know that Tracy was
16 my first call, but I know from my notes that it
17 was one of my first three.

18 I attempted to find a wastewater supply
19 not in total reverence of state policy, but
20 because they tend to be more affordable and
21 available, and I am also a big environmentalist
22 and I wanted to see if that supply would be
23 available.

24 I contacted Eric Delmas and Bob
25 Sagaser -- I apologize if I'm not pronouncing the

1 names properly -- who are the environmental
2 control officers at Tracy's wastewater treatment
3 plant. And this was November of 2001.

4 At that time I obtained information from
5 those engineers regarding the TDS levels of the
6 water supply, as well as an indication of what the
7 city's future plans were for expansion. At that
8 time the water was treated to a tertiary level,
9 and based upon TDS levels that water was deemed to
10 be not available to the project either in a
11 quality or a quantity that was desirable.

12 I then consulted with other local
13 jurisdictions and potential suppliers of treated
14 wastewater, including the Mount House Community
15 Services District, Discovery Bay, Modesto,
16 Livermore, and again as we submitted in, I believe
17 it was our response to data adequacy request 189 -
18 - if I could have a moment -- 186.

19 HEARING OFFICER GEFTER: Where is that
20 in the exhibit?

21 MR. GALATI: Just a second, I'll answer
22 that. That is exhibit, a portion of exhibit 3.

23 HEARING OFFICER GEFTER: A portion of
24 exhibit 3.

25 MR. HANSMEYER: It was our response to

1 data request 186, which very clearly detailed our
2 communication and conversations and the rationale
3 for the ultimate rejection of some of these
4 alternative supplies.

5 Being unable to source a supply of
6 treated wastewater, I then turned to other
7 potential supplies. I looked to the local
8 jurisdictions. MY partner, David Osias, who could
9 not be here today, and I really canvassed the Bay
10 Area looking for potential suppliers of water.

11 I met with, I went with Bethany as well
12 as all the contractors on the Central Valley
13 Project, as well as the state water project. In
14 doing my due diligence I noticed through a series
15 of reviews of water transfers that there seemed to
16 be a lot of water moving out of Kern County.

17 I then contacted districts within Kern
18 County in an effort to identify a source of water.
19 That is where we came across the Rosedale-Rio
20 Bravo and Buena Vista Water Storage Districts.

21 At that point we entered into
22 negotiations and a due diligence phase, with those
23 districts to answer some of the types of questions
24 that have already been addressed today through Ms.
25 Houck's cross-examination of Derrel Grant.

1 The types of things we typically look
2 for, not from a legal standpoint because those
3 have to deal with contractual obligations, but
4 from an engineering standpoint, that water is
5 available, how will it get to the plant. And the
6 Rosedale-Rio Bravo program, for a variety of
7 reasons that are articulated in my written
8 testimony -- I won't drag you through the whole
9 thing, I'll summarize it briefly -- were very
10 attractive to me in presenting this to my client.

11 Environmental review for the groundwater
12 banking program of Rosedale was nearly complete.
13 The draft had been circulated. They were moving
14 towards a final EIR in anticipated certification
15 well in advance of the CEC's need for that
16 document.

17 In review of those environmental
18 documents it was very evident from the early days
19 that it was set up as a PEIR, a programmatic level
20 EIR that would then require a tiered or a project-
21 specific EIR.

22 We then, as a condition to continuing
23 negotiations and providing due diligence on their
24 ability to supply the plant, required the
25 districts to conduct a program-level EIR and

1 environmental review on this water supply program
2 for Tesla.

3 They were able to do that again within
4 the time frame that we were working. All of those
5 are, again, attached as exhibits. I'm sorry that
6 they have been entered as exhibits along with the
7 AFC, when referenced in other documents and are
8 available to the Commission.

9 In addition to that we looked into the
10 sources of supply of water, where would this water
11 come from? Would it be surface water,
12 groundwater, state water project water, CVP water.
13 I could probably testify for two hours about the
14 regimen and legal regime about it. I'm not
15 allowed to do that as a lawyer today, but it's a
16 complex decision that you have to make.

17 Every drop of water in the state is very
18 valuable. And when you try to transfer it it
19 triggers a lot of concerns. So again, purely from
20 an engineering standpoint, we were concerned about
21 the ability of these districts to capture that
22 water and give it to us.

23 Again, pointing to source. What was
24 attractive to me about the districts was supply of
25 water was captured flood water. The district's

1 testified to that, and I think you saw yesterday
2 that this is a very well-thought-out and
3 comprehensive water supply program, with every
4 effort that's been made to minimize any potential
5 impact, both for the districts themselves as well
6 as to Zone 7.

7 The thing that we liked is that this
8 water was previously not used. It was water that
9 was going not to beneficial use, by flooding the
10 Kern River Channel, and by capturing it it
11 provided a net win/win, both for the local
12 districts, by providing an immediate supply of
13 revenue to undergo increase conservation and
14 groundwater management plans.

15 Also providing our plant with a reliable
16 supply of water. As a member district of the Kern
17 County Water Agency both Rosedale and Rio Bravo
18 have allocations of state water project water.

19 The Tesla Power Project is located
20 adjacent to the California Aqueduct. It's an easy
21 fix in terms of infrastructure and delivery to the
22 plant. So a state water project contractor with
23 rights on that program becomes an attractive thing
24 from a transmission standpoint.

25 Part of our negotiations centered on the

1 reliability and how would water physically get to
2 the plant. That's also an issue in the Tracy
3 supply. As far as the districts were concerned,
4 we couldn't ask for a more reliable and close
5 proximity supply.

6 I spent for this project numerous hours,
7 attended meetings with DWR both on a legal level
8 with legal staff and on an engineering level with
9 operators of the bank's pumping plant. I went
10 through 20 years of records of operations on the
11 bank's pumping plant to identify outages and
12 sources of those outages, in an effort to
13 determine the reliability, again not from a legal
14 standpoint, but from an engineering standpoint of
15 the state water project to deliver my client
16 water.

17 After months of review and negotiations
18 with DWR and review of those records, we were able
19 to ultimately come to a level of comfort with the
20 district's proposal and with the state aqueduct as
21 a reliable supply of water.

22 Some other members of the panel will
23 testify with some things in the staff analysis
24 regarding reliability of the project that we
25 disagree with, so I'll reserve that for them and

1 just note it now. That, I think, captures what
2 was attractive to us about the districts.

3 Once we entered into negotiations with
4 the district, as you have with any negotiation,
5 it's not a simple process. Money -- you come from
6 different levels and you come --

7 MS. HOUCK: I would object that the
8 actual money or time spent on -- I mean, the
9 process he's describing now I don't think is
10 relevant really to whether this water is actually
11 available.

12 HEARING OFFICER GEFTER: I think that
13 you could limit your testimony at this point just
14 to the actual facts of the plan that you have with
15 the water districts.

16 MR. HANSMEYER: Sure. And in fact I
17 will need direction in that regard if it comes up
18 on cross. I have been told that I am not to
19 testify as a lawyer as to the validity of contract
20 terms, or even the existence of those contracts.

21 HEARING OFFICER GEFTER: No, you've been
22 admonished to that already. So if you would just,
23 at this point, if you are about to sum up your
24 testimony, please focus on what the actual
25 agreement is with the districts, and how water is

1 expected to be delivered to the project.

2 MR. HANSMEYER: Okay. Again, I'll do
3 that under the impressions I wasn't supposed to
4 speak about the agreement. The facts --

5 HEARING OFFICER GEFTER: You can tell us
6 about the facts of the agreement.

7 MR. HANSMEYER: Sure. The facts of the
8 agreement are -- let me start with staff. Despite
9 what seems to be a very convoluted and complicated
10 water supply system, it's very, very
11 straightforward.

12 There are three agreements, and this
13 backs up Vince Wong of Zone 7's conversations in
14 the workshop yesterday, as well as I'm sure he'll
15 testify here today.

16 The three agreements that are necessary
17 for water to move from Kern County to the Tesla
18 Power Project are a point of delivery change
19 agreement between the Kern County Water Agency,
20 DWR, and Zone 7. It's between Kern County and
21 Zone 7 because they are the state water project
22 contractors, although the agreement is for the
23 benefit of the districts.

24 That document was provided in draft form
25 to Zone 7 approximately three and a half months

1 ago. It's currently under review by Zone 7 legal
2 outside counsel Brian Washington --

3 HEARING OFFICER GEFTER: Okay. That's
4 not relevant. Just tell us more about the
5 agreement.

6 MR. HANSMEYER: Okay. Well, that's the
7 first agreement, is a point of delivery and
8 exchange agreement. The second agreement was
9 originally envisioned to be an agreement between
10 FPL Energy and the districts, that would have
11 moved water and be the water supply agreement for
12 the power plant.

13 In our negotiations with Zone 7, Zone 7
14 indicated a preference that the party be in
15 agreement between Zone 7 and the districts, with
16 FPL as an express third party beneficiary. All of
17 the terms of the agreements with the districts, as
18 they apply to the districts and their binding
19 obligation with FPL have been negotiated.

20 And there's agreement on all of the
21 risks, responsibilities and representations of
22 those. The only outstanding issue is what Zone
23 7's involvement is going to be. That document is
24 also in the hands of Brian Washington in Zone 7 in
25 an effort to redraft it as a direct agreement

1 between the two districts with us as an express
2 third party beneficiary.

3 HEARING OFFICER GEFTER: So this is all
4 pending?

5 MR. HANSMEYER: Correct. Well, if I may
6 offer a response to that. It's pending because
7 you can't get to final contract when you have the
8 type of security we have with Tracy.

9 HEARING OFFICER GEFTER: I'm sorry, I'm
10 striking that last answer, that's opinion.

11 MR. GALATI: I apologize, Ms. Gefter,
12 but I have to entertain an objection as well. You
13 made a comment that this is pending, and he's
14 trying to respond to that comment. And while the
15 Committee can make that finding, I think the facts
16 of whether it is pending or not I think are
17 important.

18 HEARING OFFICER GEFTER: Well that's
19 fine, and he explained to us how it's pending,
20 because counsel for Zone 7 is reviewing the terms
21 of the contract. That's all we need.

22 MR. HANSMEYER: I can finish up quickly.
23 The last one is the turnout construction
24 agreement. That is a very standard form of
25 agreement. I consulted with the legal staff at

1 DWR, Nancy Qwan in fact provided the draft
2 document. It's no more complicated than an
3 automobile lease. You simply change the names of
4 the parties. It's a standard form.

5 Duane McCloud can testify to the
6 engineering. I believe your earlier question was
7 has this turnout been designed as other turnouts
8 have been done. Yes. We use Zone 7's template,
9 we consulted with DWR. DWR provided the
10 agreement. They've been intricately involved in
11 the negotiations, and we've met with them on
12 several occasions.

13 That's really the end of the district
14 things. If I could turn now, briefly, to my
15 involvement with the city of Tracy. During
16 negotiations with the district -- and this is also
17 part of my written testimony -- during
18 negotiations with the district, in any negotiation
19 you routinely revisit opportunity.

20 As we are all aware, the time frame for
21 this AFC process, and to get to this hearing, is
22 much longer than anybody anticipated. So, so to
23 speak, we recircled the wagons in 2002. We again
24 contacted the city of Tracy, and as in my
25 testimony shows, on March 27th of 2002 Duane

1 McCloud, Project Engineer for the plant, and Dave
2 Jones, an employee of CH2M Hill and an
3 environmental review consultant, set down with
4 both Eric Delmas and Steve Bayley of the city of
5 Tracy, gain to investigate opportunities to supply
6 treated wastewater to the project.

7 I won't speak to that meeting, I was not
8 personally in attendance there. The purpose of
9 that meeting is summarized in my written
10 testimony, but again, at that meeting, our
11 representatives left being informed again that the
12 city was not in a position to provide water on
13 that day, and the day that the plant needed it, to
14 certify the Title 22 levels which the water code
15 and Energy Commission requires for the use in
16 cooling and power plants.

17 Subsequent to that meeting, in
18 November -- November 16th 2002 -- myself, Scott
19 Busa, Duane McCloud and Dave Jones met with Nick
20 Phinhey and Steve Bayley of the city of Tracy
21 again to discuss the progress of the expansion of
22 the wastewater treatment plant, when they believed
23 that it would come online, would they be in a
24 position to provide water and on what terms?

25 Following that, on January 3rd, 2003,

1 Duane McCloud sent an e-mail to Steve Bayley. The
2 e-mail contained a reference to our willingness to
3 enter into negotiations for reclaimed water
4 supply --

5 HEARING OFFICER GEFTER: Is there a copy
6 of that document in the record?

7 MR. GALATI: I believe staff identified
8 it as an exhibit, but I can't remember -- or it
9 was attached to I believe supplemental testimony
10 or an addendum.

11 MS. HOUCK: Of staff's?

12 MR. GALATI: I believe so.

13 HEARING OFFICER GEFTER: Off the record.
14 (Off the record.)

15 HEARING OFFICER GEFTER: Back on the
16 record. Okay, the witness is, on his own,
17 striking reference to an e-mail that was sent on
18 January 3rd, 2003. Move forward please.

19 MR. HANSMEYER: Following the stricken
20 e-mail we scheduled a meeting --

21 MS. HOUCK: For clarification, the
22 testimony associated with the e-mail is also
23 stricken?

24 HEARING OFFICER GEFTER: Yes.

25 MR. GALATI: It is relevant that there

1 is ongoing communication, just as a reference, if
2 you want to make a reference of what it was, I
3 would like to make a reference that there was
4 communication in January 2003.

5 HEARING OFFICER GEFTER: You can
6 summarize what your communication was, but --

7 MR. HANSMEYER: And actually it's in the
8 written testimony -- I believe that she's not
9 striking the written testimony, just the oral.

10 HEARING OFFICER GEFTER: Let's move on.

11 MS. HOUCK: Just state it was
12 misrepresented in the written testimony.

13 MR. GALATI: We'll strike that portion
14 of the written testimony that contains what it
15 said. We'll just modify the written testimony to
16 say "e-mail from Dwight McCloud to Steven Bayley."

17 HEARING OFFICER GEFTER: And the written
18 testimony is exhibit 45. All right, please
19 proceed. And if you could do it a more summary
20 manner, we'll appreciate that.

21 MR. HANSMEYER: Certainly. I'm just
22 trying to provide complete information, because
23 that's what we all need. On January 7, 2003, we
24 had a face-to-face meeting. Scott Busa, Duane
25 McCloud, Scott Galati, myself, Dave Jones met with

1 Fred Diaz, Nick Phinhey, Steve Bayley, and Debra
2 Corbett, again to pursue the possibility of the
3 city of Tracy providing treated wastewater to the
4 plant.

5 You can see in the written testimony,
6 you know, while driving through it, the purpose
7 was due diligence. Following that meeting I sent
8 a letter to Fred Diaz, the City Manager, on
9 January 28th, outlining what -- during that face-
10 to-face meeting I was requested to provide a copy
11 of the district agreement because of
12 confidentiality issues, and because of the ongoing
13 and sensitive nature of the negotiations of that
14 agreement.

15 We were not able to provide a copy, but
16 the January 28th letter provided the types of
17 terms that we typically ask for in water supply.

18 HEARING OFFICER GEFTER: January 28th,
19 now what is that? Is that part of your testimony?

20 MR. HANSMEYER: It's part of my
21 testimony, and it's also an exhibit.

22 MR. GALATI: Can you look at your
23 testimony, I believe you're looking at a letter
24 from Fred Diaz to city of Tracy. Are you
25 referring to --

1 MR. HANSMEYER: I'm sorry, yes, the
2 letter I sent was February 6, 2003.

3 HEARING OFFICER GEFTER: And is that
4 included in the testimony?

5 MR. HANSMEYER: Yes it is.

6 HEARING OFFICER GEFTER: Do you have a
7 copy of it?

8 MR. GALATI: It's attached as exhibit --

9 MR. HANSMEYER: To take a step back,
10 January 28th was not my letter. It was a letter
11 from Fred Diaz that's already been referenced in
12 Derrel Grant's testimony, that contained a
13 reference to the city council resolution and some
14 proposed terms.

15 The purpose, in my opinion and not a
16 legal opinion but just an opinion --

17 HEARING OFFICER GEFTER: I'm striking
18 the last sentence. I don't know how you were
19 going to turn that into a sentence, but you're not
20 answering a question when no question was pending.
21 So I'm going to go off the record.
22 (Off the record.)

23 HEARING OFFICER GEFTER: Back on the
24 record. Mr. Galati is going to direct the
25 witness, and identify the documents to which the

1 witness is referring, by exhibit number. Mr.
2 Galati?

3 MR. GALATI: Mr. Hansmeyer, are you
4 familiar with exhibit 62, a letter dated February
5 6th, 2003?

6 MR. HANSMEYER: Yes I am.

7 MR. GALATI: And is that letter
8 summarized in your written testimony?

9 MR. HANSMEYER: Yes it is.

10 MR. GALATI: Does that letter, what was
11 the purpose of that letter?

12 MR. HANSMEYER: The purpose was to
13 request some additional information from the city
14 of Tracy to allow me to conduct due diligence into
15 the technical, physical and, again, legal ability
16 of the city to transfer water.

17 MR. GALATI: And did you receive the
18 necessary information?

19 MR. HANSMEYER: To date I have not.

20 MR. GALATI: Are you familiar with
21 exhibit 153, identified as a March 26, 2003 letter
22 from yourself to Fred Diaz?

23 MR. HANSMEYER: Yes I am.

24 MR. GALATI: What was the purpose of
25 that letter?

1 MR. HANSMEYER: That letter was sent as
2 a followup to the letter previously referenced on
3 February 6th, again asking for the due diligence
4 materials that were previously requested, as well
5 as identifying some new types and a variety of
6 contractual terms that the city would need to
7 address should we come to contract.

8 MR. GALATI: Are you familiar with
9 exhibit 154. We have identified it as a letter,
10 it's dated May 21st, 2003?

11 MR. HANSMEYER: Yes I am.

12 MR. GALATI: I have identified it as a
13 letter, is it a letter?

14 MR. HANSMEYER: No, to my understanding
15 it was a memorandum that was sent electronically,
16 and there is an error in the record. The
17 addressee of that letter, or memo, was actually
18 Martha Lennihan and Debra Corbett.

19 MR. GALATI: Okay. What was the purpose
20 of that e-mail?

21 MR. HANSMEYER: That e-mail was sent --

22 MR. GALATI: I apologize. What was the
23 purpose of that electronic communication?

24 MR. HANSMEYER: That was sent as a
25 followup to a face-to-face meeting with

1 representatives of the city of Tracy, including
2 Martha Lennihan, Debra corbett, Steve Bayley.

3 During that meeting certain action items
4 were identified by the parties for them to
5 followup on. Action items such as Martha
6 Lennihan, who is legal counsel for the city of
7 Tracy, providing some sort of either contractual
8 guarantees or legal opinion as to the
9 transferability of the supplies, and indications
10 from city staff as to the willingness of city
11 officials to enter into the type of contract that
12 we were negotiating.

13 MR. GALATI: Did you ever receive a
14 response to that?

15 HEARING OFFICER GEFTER: Are you
16 referring to -- which item?

17 MR. GALATI: To exhibit 154.

18 MS. HOUCK: I'm sorry, could you repeat
19 the question?

20 MR. GALATI: Did you receive a response
21 to exhibit 154?

22 MS. HOUCK: Thank you.

23 MR. GALATI: I have received one
24 document to date from the city of Tracy. That
25 document is entitled "mitigated negative

1 declaration on the city of Tracy's groundwater
2 management policy."

3 HEARING OFFICER GEFTER: Is that an
4 exhibit?

5 MR. HANSMEYER: No, it's not. And that,
6 I think, is the point. It's --

7 HEARING OFFICER GEFTER: I'm sorry, I
8 did not ask you the question. I'm asking if
9 that --

10 MR. GALATI: No, it is not an exhibit
11 that we listed. I'm not sure whether staff listed
12 it, because my understanding is that in their
13 addendum they did a groundwater analysis. They
14 may have provided --

15 HEARING OFFICER GEFTER: The question
16 was is it an exhibit. If you don't know, it's not
17 an Applicant exhibit, is it a staff exhibit?

18 MS. HOUCK: No, we did not submit the
19 actual report. It is referenced in our staff
20 addendum regarding the reclaimed water pipeline.

21 HEARING OFFICER GEFTER: Okay.

22 MS. HOUCK: For the interim water supply
23 we did an assessment of whether that water would
24 be available, and we referenced the document. But
25 the actual document is not an exhibit.

1 HEARING OFFICER GEFTER: And what is the
2 document?

3 MS. HOUCK: I believe it is the
4 Brookman-Edmonston report regarding groundwater,
5 and it's -- it's the Brookman-Edmonston
6 engineering report 2001, draft estimated
7 groundwater yield for the city of Tracy by
8 navigant consulting.

9 HEARING OFFICER GEFTER: It's referenced
10 in staff's exhibits as a web page?

11 MS. HOUCK: The actual report is
12 referenced in staff's first addendum to the final
13 staff assessment in regards to the assessment we
14 did for the availability of the interim water
15 supply.

16 HEARING OFFICER GEFTER: So it's
17 referenced in an exhibit, I believe it's 52?

18 MS. HOUCK: Yes.

19 HEARING OFFICER GEFTER: All right. You
20 may continue your questions of the witness.

21 MR. GALATI: Mr. Hansmeyer, you were
22 present during the staff's cross-examination of
23 Mr. Grant?

24 MR. HANSMEYER: Yes I was.

25 MR. GALATI: Ms. Houck asked a series of

1 questions regarding contractual issues. I'd like
2 to first direct your attention to -- she asked a
3 question about the Rosedale Rio-Bravo contract.
4 And I believe her question -- Ms. Houck, correct
5 me if I mischaracterize, was along the lines of
6 the terms of that contract.

7 You know what, actually I'll just leave
8 that for her to cross. If I could go off the
9 record for a minute?

10 HEARING OFFICER GEFTER: Off the record.
11 (Off the record.)

12 HEARING OFFICER GEFTER: Back on the
13 record.

14 MR. GALATI: I have no more direct
15 examination for Mr. Hansmeyer. He will be
16 available for cross-examination with the rest of
17 the panel. Mr. Jones, will you please identify
18 yourself, including spelling your name, and tell
19 us who you work for and what your role is on the
20 project?

21 MR. JONES: My name is Dave Jones D-a-v-
22 e, last name J-o-n-e-s. I have worked for CH2M
23 Hill over the past two years as a principal
24 engineer. I have a Masters in Science degree from
25 Stanford University in civil environmental

1 engineering. I've been working in water
2 engineering for the past 25 years.

3 Registered professional civil engineer
4 in the state of California. I have been working
5 in California as a practicing water engineer since
6 1983.

7 Most recently the projects I've been
8 working on in water and energy include the Russell
9 City Energy Center, water supply and permitting;
10 Rio Linda-Elverta Power Project; Los Histeros
11 Critical Energy Facility; Geyser Steam Field
12 Complex, and others.

13 MR. GALATI: Mr. Jones, did you
14 prepare -- oh, excuse me, what was your role in
15 the project?

16 MR. JONES: My role on the project is
17 I've been investigating and analyzing water supply
18 reliability since December of 2001.

19 MR. GALATI: Mr. Jones, did you prepare
20 exhibit 26, which is the white paper relating to
21 DWR reliability dated November 15, 2002?

22 MR. JONES: Yes.

23 MR. GALATI: Did you also prepare
24 exhibit 27, which is the engineering report, Tesla
25 Power Project, north reach user impacts, dated

1 March, 2003?

2 MR. JONES: Yes.

3 MR. GALATI: Are you also familiar with
4 exhibit 28, which is the map of water conveyance
5 facilities, dated March 2003?

6 MR. JONES: Yes.

7 MR. GALATI: Are you also familiar with
8 exhibit 29, which is a letter from DWR to CEC
9 concerning the white paper, dated November 26,
10 2002?

11 MR. JONES: Yes.

12 MR. GALATI: Mr. Jones, could you
13 briefly tell us why you prepared the white paper?

14 MR. JONES: The white paper was prepared
15 to assess water supply reliability to the Tesla
16 Power Project from the Rosedale-Rio Bravo Buena
17 Vista water supply source.

18 MR. GALATI: And what was your
19 conclusions in the white paper?

20 MR. JONES: That water supply from
21 Rosedale-Rio Bravo and Buena Vista was a reliable
22 source of supply.

23 MR. GALATI: You're referring to exhibit
24 29, which is the letter from DWR to CEC concerning
25 the white paper.

1 MR. JONES: Yes.

2 MR. GALATI: Does DWR agree with your
3 conclusions contained in the white paper?

4 MR. JONES: Yes. And, as a matter of
5 fact, if you look at the --

6 MS. HOUCK: I would object that he can't
7 draw conclusions as to what DWR did. I would ask
8 him to refer to what's stated in the letter.

9 HEARING OFFICER GEFTER: The objection
10 is sustained. And I think the letter speaks for
11 itself.

12 MR. GALATI: Mr. Jones, did you have
13 communications with DWR during preparations of
14 your white paper?

15 MR. JONES: Yes.

16 MR. GALATI: Did they have any input
17 into the information you used to develop that
18 white paper?

19 MR. JONES: Yes.

20 MR. GALATI: Thank you. Mr. Jones, what
21 was the purpose of preparing exhibit 27, the
22 engineering report?

23 MR. JONES: That was to assess the
24 potential impacts of the proposed water supply
25 from Rosedale-Rio Bravo on the Zone 7 and the

1 other users of the water from the south bay
2 aqueduct. And the north reach of the state
3 aqueduct.

4 MR. GALATI: You are familiar with your
5 testimony, exhibit 45, in this matter? Are you
6 familiar with your exhibit 45, entitled "testimony
7 of --

8 MR. JONES: Oh, yes.

9 MR. GALATI: Dave Jones, Chris
10 Hansmeyer" --

11 MR. JONES: Yes I am.

12 MR. GALATI: Could you briefly summarize
13 your testimony?

14 MR. JONES: Yes. Can I refer to exhibit
15 28, just for purposes of discussion, is that
16 possible?

17 MR. GALATI: Yes, he has actually blown
18 that exhibit up, is that okay?

19 HEARING OFFICER GEFTER: That's fine.

20 MS. HOUCK: Just for clarification.
21 This is the same mouth that's in the -- what is
22 the exhibit number?

23 HEARING OFFICER GEFTER: I'm verifying,
24 this is exhibit 28?

25 MR. JONES: That's correct. Can people

1 see this?

2 HEARING OFFICER GEFTER: If any member
3 of the public wants to see this map, you can come
4 forward and look at it.

5 MR. GALATI: Ms. Houck, the only thing I
6 can see different is the placement of the north
7 arrow.

8 MR. JONES: Yes, north is shown to be
9 this way.

10 MR. GALATI: Yes, it's just where it is
11 on the exhibit that's presented --

12 HEARING OFFICER GEFTER: This way is
13 northwest.

14 MR. JONES: Well, I guess if you hold it
15 like this --

16 HEARING OFFICER GEFTER: All right, this
17 is exhibit 28, blown up.

18 MR. JONES: Okay, let me just explain
19 what's shown here. What we see here is the city
20 of Tracy, with business 205, with 80 here on the
21 bottom. The water supply to the Tesla Power Plant
22 is shown here. The power plant's water supply
23 would be from the proposed turnout at milepost
24 8.5.

25 So here's the state aqueduct. The water

1 comes in from the delta, into the Clifton Court
2 Forebay, is pumped by the bank's pumping plant
3 into the Bethany Reservoir. This is considered
4 pool one of the state aqueduct. It enters through
5 check one into pool two, which is bounded by check
6 station one and check station two.

7 What's also not shown here is that the
8 Tesla Power Plant also has at present an eight
9 million gallon storage tank onsite. That is
10 backup for reliability.

11 What I found in my analysis is that --

12 HEARING OFFICER GEFTER: I want to
13 interrupt you. It's an 800,000 gallon storage
14 tank?

15 MR. JONES: Eight million gallon.

16 HEARING OFFICER GEFTER: Eight million
17 gallon storage tank. And that storage tank is
18 part of the project description, is that correct?

19 MR. JONES: Yes.

20 HEARING OFFICER GEFTER: And that could
21 store either state water project water or it could
22 store reclaimed water.

23 MR. JONES: It could store either. It's
24 actually 8.3 million gallons.

25 HEARING OFFICER GEFTER: 8.3 million,

1 all right. Thank you.

2 MR. JONES: What I found in my
3 engineering analysis is that, under normal
4 conditions, the reliability of the water supply
5 from the proposed, what we'll call Zone 7 water
6 supply, which is coming from Rosedale Rio-Bravo
7 Buena Vista, is of no concern in terms of
8 reliability.

9 So it was really only under extreme or
10 worst case conditions that there was any sort of
11 issue of reliability was found. And that includes
12 discussions with Zone 7 and with Water Resources.

13 There were four worst-case scenarios
14 evaluated. One was a case of severe drought. The
15 second was in terms of flow curtailments from the
16 bank's pumping plant, based on concerns over take
17 of endangered fish species in the delta.

18 The third was plant shutdowns due to
19 plant maintenance of the bank's pumping plant.
20 And the last one was unanticipated shutdowns of
21 the bank's pumping plant.

22 And of those four scenarios it was
23 determined that the fourth one, unanticipated
24 shutdowns, presented the most worst case, or the
25 most vulnerable issue associated with reliability.

1 Now the most typical cause of an
2 unanticipated shutdown, and one I would call
3 prolonged shutdown, would be a leak in the canal
4 of the state aqueduct. And that leak would cause
5 shutdown or stoppage of flow in the state
6 aqueduct.

7 Now in terms of canal leak repairs --
8 and DWR of course operates this -- in our meetings
9 with them they testified that approximately the
10 canal leaks occur, repairs occur, along the state
11 aqueduct, which extends from this facility here
12 all the way down to southern California,
13 approximately once every two to three years.

14 And most of those leaks occur in the
15 southern California portion of the state aqueduct,
16 due to poor soil conditions and geodesic
17 conditions there. Now in nearly all the cases in
18 my analysis, DWR employs a grouting procedure to
19 repair the canal while still allowing flow to
20 occur.

21 So flow does not shut down in any canal
22 in most cases while they repair the leak. Now for
23 this particular project, with the power plant,
24 we'd be only concerned with canal leaks that occur
25 upstream of milepost 8.5, or in this case let's go

1 with check station two.

2 In other words, pool one and pool two of
3 the state aqueduct. In our analysis we've
4 identified only three such canal leaks that have
5 occurred in the history of the state water project
6 in this area. Two occurred over 15 years ago, and
7 we couldn't find any data on that.

8 But one did occur in June of 2001 and in
9 my opinion this June situation sort of represents
10 the worst case, because it was in a fill section
11 of the canal, which requires more construction,
12 more prolonged outage, and it lasted 20 days,
13 which is considered one of the longest outages of
14 the canal.

15 So let's talk about this worst case
16 situation in June. What happened there was the
17 the DWR was forced to shut down banks for
18 approximately 20 days, and what they did is that
19 they, knowing that they needed to fill the needs
20 of Zone 7 and other south bay aquatic users, as
21 well as other users in pool one and pool two.

22 They mobilized temporary pumps to pump
23 from the Delta Mendota canal, which you see here
24 paralleling the state aqueduct, and they mobilized
25 pumps, temporary portable pumps in about three

1 days, and pumped up to, or reached 114 CFS in
2 three days, from the Delta Mendota canal into pool
3 one, the Bethany Reservoir.

4 HEARING OFFICER GEFTER: I'm going to
5 interrupt, Mr. Jones, and ask counsel the
6 relevance of this testimony?

7 MR. GALATI: The staff assessment has
8 assessed a reliability penalty in the cost
9 analysis and the written analysis due to outages
10 in this particular reach, where the project would
11 not be able to generate power. We're establishing
12 that we disagree with that, and we're establishing
13 the basis for that.

14 HEARING OFFICER GEFTER: Okay. Well,
15 perhaps, you know, we can be more to the point. I
16 think that talking about what the state water
17 project did to repair the canal and that sort of
18 thing is really beyond the scope of your point
19 here. So it's better if you direct the witness.

20 MR. GALATI: I certainly will do that.
21 I want to point out that the staff assessment,
22 which is testimony in an exhibit, is filled with
23 this information. And we believe that it's
24 incorrectly referenced.

25 HEARING OFFICER GEFTER: Perhaps you can

1 speak to those points.

2 MR. GALATI: Mr. Jones, do you agree
3 with the staff assessments analysis of the amount
4 of times that the project would no be able to get,
5 the amount of days that the project will not be
6 able to get water out of the turnout a milepost
7 8.5 in the aqueduct?

8 MR. JONES: I agree with staff's
9 assessment where they said that the reliability of
10 the water supply for the Zone 7 alternative was
11 equivalent to the water supply for the reclaimed
12 water supply. And, just to cut to the chase, in
13 my professional opinion, the reliability of the
14 water supply --they're both reliable supplies.

15 MR. GALATI: And did staff assess any
16 sort of penalty in their cost analysis due to
17 outages and not being able to get water from
18 turnout at milepost 8.5?

19 MR. JONES: Yes, in their economic
20 summary they assessed a present worth of over \$21
21 million as an economic penalty for the Zone 7
22 supply.

23 MR. GALATI: How many days did staff
24 assume that the power project would not be able to
25 get water?

1 MR. JONES: Is there, I'd have to look a
2 that table. It's the calculations that are
3 footnoted in that table.

4 MR. GALATI: Do you agree that there
5 would be any time in which the project would not
6 be able to -- let me restate that. Do you
7 believe that with the two days of, excuse me, that
8 with the large storage tank onsite, that the
9 project using the Kern County exchange water would
10 ever be without power?

11 MR. JONES: No, there should be no power
12 outages assumed.

13 HEARING OFFICER GEFTER: Okay. I want
14 to ask about the storage tank again. You
15 indicated 8.3 million gallons. How many days of
16 water supply does that hold?

17 MR. JONES: That question is better
18 answered by another panel member.

19 HEARING OFFICER GEFTER: All right. Mr.
20 Galati?

21 MR. GALATI: I have no further questions
22 for Mr. Jones.

23 HEARING OFFICER GEFTER: Thank you, Mr.
24 Jones. Do you have another witness, and how long
25 will that witness take? Off the record.

1 (Off the record.)

2 HEARING OFFICER GEFTER: Back on the
3 record.

4 MR. GALATI: I believe Mr. McCloud has
5 previously testified, and previously submitted his
6 qualifications and description of what his role is
7 on the project. Mr. McCloud, are you familiar
8 with exhibit 45, which is your testimony on water
9 resources in this matter?

10 MR. MCCLOUD: Yes I am.

11 MR. GALATI: Does the Applicant agree
12 with soil and water conditions as outlined in the
13 staff assessment soil and water one through ten?

14 MS. HOUCK: For clarification, Mr.
15 Galati, are you referring to exhibit 51 or exhibit
16 52, which contains the additional requested
17 conditions in addendum two regarding the reclaimed
18 water pipeline.

19 MR. GALATI: I'm referring to the final
20 staff assessment, which is exhibit 51.

21 MS. HOUCK: Thank you.

22 MR. GALATI: Mr. McCloud, does the
23 Applicant agree with soil and water conditions one
24 through ten in exhibit 51? Let me refer you to
25 your testimony here.

1 MR. MCCLOUD: Yes we do.

2 MR. GALATI: Does the Applicant agree
3 that additional conditions of certification
4 recommended in exhibit 52 related to water, does
5 the Applicant agree with those additional
6 conditions?

7 MR. MCCLOUD: Yes we do.

8 MR. GALATI: I'm referring you to your
9 testimony again. Does the Applicant agree with
10 the additional conditions imposed on staff's first
11 addendum to the staff assessment entitled
12 "reclaimed water supply pipeline" and identified
13 as exhibit 52?

14 HEARING OFFICER GEFTER: I thought the
15 witness just testified that he agreed with those?

16 MR. GALATI: Yes, but that's
17 inconsistent with the written testimony. I'm
18 trying to clear that matter up. I may have
19 represented to the wrong exhibit. I want to make
20 sure I have the right exhibit.

21 HEARING OFFICER GEFTER: Well, do you
22 want to strike his answer regarding exhibit 52?

23 MR. GALATI: Yes, I'd like to strike his
24 answer regarding exhibit 52.

25 HEARING OFFICER GEFTER: Okay, witness

1 had answered previously and his testimony will be
2 stricken regarding exhibit 52. It will be helpful
3 if you specifically identify the conditions tha
4 you are referring to, Mr. Galati.

5 MR. GALATI: Actually, I'm going to let
6 the written testimony speak for itself and not ask
7 any more questions on that particular issue. Mr.
8 McCloud, did you review the staff's analysis
9 contained in exhibit 51 regarding comparison of
10 the costs of the city of Tracy water versus the
11 Kern County water supply plan?

12 MR. MCCLOUD: Yes I did.

13 MR. GALATI: And do you agree with the
14 staff assessment?

15 MR. MCCLOUD: No I do not.

16 MR. GALATI: Can you tell us in what
17 areas you disagree with staff's assessment?

18 MR. MCCLOUD: Staff's assessment --
19 there are several areas of disagreement, the
20 biggest one of which was previously referenced by
21 Mr. Jones, was an assessment of a penalty
22 associated to lost generation, which I disagree
23 with for the reasons that Mr. Jones explained
24 regarding the reliability of the water supply from
25 the Kern County via Zone 7 turnout.

1 Also, I had some clarifications related
2 to that particular table, and I'm referring to
3 table five --

4 MR. GALATI: In exhibit 51?

5 MR. MCCLOUD: Exhibit 51, regarding
6 costs of the two options, and prepared an update
7 of that description, which I submitted with my
8 testimony. The primary changes on that were
9 clarifications that had taken place since the
10 initial data response submittal regarding relative
11 cost of the Tracy reclaimed water versus the Kern
12 Zone 7 supply.

13 And in that table I summarized a net
14 cost difference between those two of approximately
15 21 million dollars. The updates on that table
16 were largely due to additional discussions that
17 had taken place regarding preliminary design
18 operation and any update of additional cost
19 information that had been made available to us
20 since that table was first submitted, I believe in
21 April of 2002.

22 MR. GALATI: Mr. McCloud, when you said
23 you identified a monetary difference, can you
24 explain to us which water supply you thought was
25 more expensive?

1 MR. MCCLOUD: The net cost to the
2 project of utilizing the Tracy reclaimed water
3 supply was the more expensive option.

4 MR. GALATI: And by what margin?

5 MR. MCCLOUD: By approximately 21
6 million dollars.

7 MR. GALATI: Ms. Gefter, can we break
8 now, and if I have followup questions --

9 HEARING OFFICER GEFTER: Off the record.
10 (Off the record.)

11 HEARING OFFICER GEFTER: Back on the
12 record. Mr. Galati, are you finished with the
13 direct examination of your witnesses?

14 MR. GALATI: I have a few more
15 questions.

16 HEARING OFFICER GEFTER: Is this of Mr.
17 McCloud?

18 HEARING OFFICER GEFTER: Yes it is.

19 HEARING OFFICER GEFTER: All right,
20 please continue.

21 MR. GALATI: Mr. McCloud, are you
22 familiar with exhibit 54, which is staff
23 supplemental testimony and rebuttal testimony
24 dated September 5th, 2003?

25 MR. MCCLOUD: Yes I am.

1 MR. GALATI: And have you reviewed the
2 water resources section of that testimony?

3 MR. MCCLOUD: Yes I have.

4 MR. GALATI: And do you agree with it?

5 MR. MCCLOUD: No, I do not.

6 MR. GALATI: Why?

7 MR. MCCLOUD: I believe several of the
8 characterizations and assumptions made in
9 preparing the economic comparison listed in that
10 exhibit are without merit.

11 MR. GALATI: Can you please identify
12 them for the committee?

13 MR. MCCLOUD: Yes. The pipeline cost
14 numbers previously developed by staff were
15 significantly changed here, significantly lowered.
16 Which shifted some of the economics in favor of
17 the reclaimed water supply, and I don't believe
18 the explanation of citing a single project is
19 necessarily justification for doing that.

20 They also went into significant
21 discussion regarding ZLD treatment, and minimizing
22 the difference between the Tracy water supply and
23 the Zone 7 water supply.

24 MR. GALATI: Mr. McCloud, was that based
25 on a certain assumed TDS in the reclaimed water?

1 MR. MCCLLOUD: Yes it was. It was based
2 on a 600 ppm TDS number, assuming that Zone 7 will
3 -- or, excuse me, assuming Tracy reclaimed water
4 will be in that range prior to operation of the
5 power plant.

6 MR. GALATI: And is that what Mr. Grant
7 asked for as one of the terms?

8 MR. MCCLLOUD: Yes, it is what Mr. Grant
9 asked for. The historical data on Tracy is much
10 higher, and the historical data is what has been
11 used up until this analysis by both staff and
12 myself.

13 As we heard during the workshop
14 yesterday, Mr. Bailey indicated that they believe
15 that they will be in that range within the next
16 few years. However, I've seen no calculations or
17 evidence to support that conclusion. Accordingly,
18 one might characterize my assessment as being
19 somewhat conservative.

20 However, I had no data to make it less
21 conservative than that. Likewise they
22 characterized the state water project as having
23 TDS spikes --

24 MS. HOUCK: I would object to
25 characterizations of what Mr. Bayley did or did

1 not say during the workshop yesterday. Mr. Bayley
2 will be available to testify later.

3 HEARING OFFICER GEFTER: Your objection
4 is sustained.

5 MR. MCCLOUD: Then I will simply
6 reference that they --

7 HEARING OFFICER GEFTER: You're
8 referring to "they" as staff?

9 MR. MCCLOUD: As staff, in this exhibit,
10 have used a number of 600, and make reference in
11 the exhibit of "Tracy has advised staff." To
12 continue on, the analysis -- and they've generated
13 several cases -- the analysis shows very little
14 difference in both capital equipment required and
15 treatment costs associated with the two different
16 water supplies.

17 And that characterization, even if the
18 600 ppm number is accurate for the Tracy water
19 supply, does not make sense. The state water
20 supply, based on DWR numbers, averages about 277
21 ppm versus 600. There's going to be a significant
22 difference in both treatment equipment required
23 and the cost ongoing to do that treatment.

24 I've got several other points of
25 disagreement, but I'll say they're comparatively

1 minor.

2 MR. GALATI: At this time I'd like to
3 move in exhibits, and I'd like to first start with
4 the exhibits that we've mentioned, and then I'll
5 identify specifically the exhibits identified in
6 the testimony.

7 So the first is exhibit 26, a white
8 paper; exhibit 27, the engineering report; exhibit
9 28 -- actually, I apologize. Mr. McCloud, are you
10 familiar with exhibit 30, the letter from Vincent
11 Wong dated August 27, 2003?

12 MR. MCCLOUD: Yes I am.

13 MR. GALATI: In addition to those
14 exhibits, exhibit 29 and exhibit 30.

15 HEARING OFFICER GEFTER: I believe we
16 accepted exhibit 30 yesterday.

17 MR. GALATI: I'm sorry, I didn't have it
18 marked off. It was my exhibit.

19 HEARING OFFICER GEFTER: All right.
20 Well, to be sure, I'll move it again today.

21 MR. GALATI: Okay, I didn't check that
22 off because --

23 HEARING OFFICER GEFTER: I know, that's
24 fine. I don't know how it got on the list. I'm
25 sorry, why don't you repeat those numbers again?

1 MR. GALATI: 26 through 29, and 30.
2 Exhibit 45; exhibit 152 through 154; and
3 specifically, exhibit 45 identifies a portion of
4 exhibit one -- would you like me to identify those
5 portions?

6 HEARING OFFICER GEFTER: Yes.

7 MR. GALATI: AFC section 5.4, table 6.1-
8 1, sections 6.5.6; a portion of exhibit 2, soil
9 responses, soils one through soils three; a
10 portion of exhibit 3, response to data request
11 number 175 through 204; exhibit 4, responses to
12 the second set of data requests, numbers 254
13 through 259, 261 through 266, and 269 through 282.

14 HEARING OFFICER GEFTER: Okay, is there
15 any objection to any of those exhibits?

16 MS. HOUCK: I would just object to
17 portions of exhibit 44 of Mr. Hansmeyer's
18 testimony, on page 12 --

19 MR. GALATI: That's 45.

20 MS. HOUCK: 45, I apologize, starting
21 with using the selection criteria identified
22 above, it is apparent that it appears to be
23 drawing conclusions that aren't necessarily based
24 on the evidence within the record, and expresses
25 opinion as to what the facts in the record would

1 mean.

2 And there's also some references in the
3 table that Mr. Hansmeyer testified he was not
4 present at those meetings, and would therefore not
5 have personal knowledge, and I would object to
6 some of the characterizations.

7 MR. GALATI: Are you asking that
8 everything from that paragraph be stricken?

9 MS. HOUCK: Except for the last sentence
10 of that paragraph on page 13. And then the last
11 paragraph of the testimony.

12 HEARING OFFICER GEFTER: Page 13, it
13 begins in the middle of a paragraph, so which --

14 MS. HOUCK: The full paragraph starting
15 at page 12, except for the last sentence.

16 HEARING OFFICER GEFTER: And then the
17 table?

18 MS. HOUCK: Well, actually -- I guess we
19 can leave the table in, I can address those issues
20 on cross-examination. So I'll withdraw my motion
21 to -- but I'd also like the last paragraph of the
22 testimony in addition to the one on page 12 as
23 well.

24 HEARING OFFICER GEFTER: Okay, so the
25 paragraph beginning at page 12, and it continues

1 to page 13; the last paragraph on page 15?

2 MS. HOUCK: Yes.

3 HEARING OFFICER GEFTER: All right. Mr.
4 Galati, do you have a response?

5 MR. GALATI: Yes I do, we can certainly
6 strike what is not supported by evidence in the
7 record. But this person can certainly opine from
8 a factual position whether or not he believes that
9 the reclaimed water supply from the city of Tracy,
10 based on the knowledge he had at that time, is
11 available. And whether it was at a comparable
12 cost.

13 HEARING OFFICER GEFTER: Okay, is this
14 at page 12 or 13?

15 MR. GALATI: The last paragraph of page
16 12, first sentence.

17 MS. HOUCK: But he's testifying to
18 conclusions of whether the city is willing to do
19 certain things, or whether they're able to, and I
20 -- there's language in there regarding the city's
21 willingness or inability to do certain things.
22 And that I think is more argumentative.

23 MR. GALATI: Can I just go through the
24 paragraphs, you identified a lot.

25 MS. HOUCK: Okay.

1 MR. GALATI: The first paragraph, I
2 think that sentence is relevant. And it is
3 relevant and is of a factual basis. If the
4 comment is not supported by evidence and the
5 record sounds like a legal conclusion, clearly we
6 can modify that.

7 I can get him to modify that --

8 HEARING OFFICER GEFTER: No, I'm sorry,
9 I'm going to rule this way. The testimony can
10 stay in, it will be given the weight it's worth.
11 If there's opinion the Committee will be able to
12 recognize if it's opinion not based on facts in a
13 record.

14 If the statement in the testimony
15 indicates what the witness thinks the city can do,
16 we will give it whatever weight it's worth. And
17 we expect testimony from the city, and the city
18 can testify on its own behalf. So at this point
19 the motion is denied to strike that testimony.
20 Thank you.

21 MR. GALATI: I'd ask that those exhibits
22 be moved into the record.

23 HEARING OFFICER GEFTER: Okay. Given
24 that, do you have any other objections to the
25 exhibits?

1 MS. HOUCK: No I do not.

2 HEARING OFFICER GEFTER: Okay. Mr.

3 Sarvey, do you have any comments or objections to
4 the exhibits?

5 MR. SARVEY: No objections.

6 HEARING OFFICER GEFTER: The exhibits
7 listed by Mr. Galati related to soil and water
8 resources are now received into the record. Mr.
9 Sarvey, I know you have public comment. We're
10 going to wait and let Ms. Houck do cross-
11 examination, and then maybe you can present your
12 public comment.

13 MR. SARVEY: Okay, thank you.

14 MS. HOUCK: I guess I'll start with Mr.
15 Hansmeyer, but if he's not able to answer a
16 specific question is the Committee going to have
17 other witnesses available, or do you want me to go
18 witness by witness?

19 HEARING OFFICER GEFTER: The panel is
20 available for you to ask questions to any member
21 of the panel that can answer the question.

22 MS. HOUCK: Thank you.

23 HEARING OFFICER GEFTER: Mr. Galati will
24 determine which witness will testify, and one
25 witness will answer at a time.

1 MS. HOUCK: Has the CEC staff requested
2 agreements for the water -- well, first off,
3 earlier you testified to contractual negotiations
4 that FPL has been having with Kern County water
5 districts, is that correct?

6 MR. HANSMEYER: Yes it is.

7 MS. HOUCK: Has the CEC staff requested
8 more specific language or copies of draft
9 agreements between the water district and FPL?

10 MR. HANSMEYER: Yes it has.

11 MR. GALATI: I have to enter an
12 objection. I asked -- I was admonished not to
13 have the witness talk about the contractual terms
14 of that agreement. So are we going to go into
15 the --

16 MS. HOUCK: I'm asking for the specific
17 terms, not his opinion as to whether they are
18 appropriate or not legally. I mean, it was my
19 understanding that the Applicant had presented
20 testimony from Mr. Grant as to what the terms of
21 the contract FPL would need to consider water
22 available would be. And --

23 HEARING OFFICER GEFTER: Okay, that was
24 Mr. Grant's testimony, do you want to ask him
25 questions about that?

1 MS. HOUCK: Mr. Grant indicated he could
2 not address that question and that there were
3 other members of the panel that could, and I
4 believe he was referring to Mr. Hansmeyer.

5 MR. GALATI: And when I tried to ask Mr.
6 Hansmeyer about those terms the Committee
7 precluded me from asking him about the terms of
8 those contracts.

9 MS. HOUCK: I'm asking whether he gave
10 the documents to staff, though.

11 MR. GALATI: Okay, I won't object to
12 that question.

13 HEARING OFFICER GEFTER: Frame your
14 question that way then.

15 MS. HOUCK: Has FPL provided those
16 documents to staff?

17 MR. HANSMEYER: No they have not.

18 MS. HOUCK: And today Mr. Grant gave
19 testimony as to what specific or what general
20 provisions he would need in a contract to enter
21 into an agreement with the city of Tracy, is that
22 correct?

23 MR. HANSMEYER: That is correct.

24 MS. HOUCK: You have a summary or a
25 chart attached to your testimony, is that correct?

1 MR. HANSMEYER: Yes it is.

2 MS. HOUCK: And that's exhibit 45, the
3 section entitled "testimony of Chris Hansmeyer",
4 page 13?

5 MR. HANSMEYER: That's correct.

6 MS. HOUCK: And you have listed on here
7 several dates and summaries of meeting with the
8 city of Tracy?

9 MR. HANSMEYER: Correct.

10 MS. HOUCK: The second item listed is a
11 meeting that occurred on March 27th, 2002?

12 MR. HANSMEYER: That's correct.

13 MS. HOUCK: And, just to clarify,
14 earlier did -- were you present at that meeting?

15 MR. HANSMEYER: No I was not.

16 MS. HOUCK: So you have no personal
17 knowledge of what happened at that time?

18 MR. HANSMEYER: I was not in attendance
19 but I was in consultation with both Duane McCloud
20 and Dave Jones. I've reviewed all the meeting
21 notes from that --

22 HEARING OFFICER GEFTER: Okay, I'm
23 sorry, I'm going to interrupt. Was that as
24 counsel to the individual, to FPL?

25 MR. HANSMEYER: Yes.

1 HEARING OFFICER GEFTER: Okay. As
2 counsel you're providing legal advice that is
3 beyond the scope here.

4 MS. HOUCK: So that testimony, other
5 than --

6 HEARING OFFICER GEFTER: We'll strike
7 it.

8 MS. HOUCK: So I'll just ask again to
9 clarify. You were not present at the meeting?

10 MR. HANSMEYER: No I was not.

11 MS. HOUCK: And you have the third
12 meeting date as 11/16/2002?

13 MR. HANSMEYER: Correct.

14 MS. HOUCK: And just to clarify, is that
15 the actual date that meeting occurred?

16 MR. HANSMEYER: To the best of my
17 recollection, yes, that's what my notes show.

18 MS. HOUCK: Okay. Can you tell me on
19 this list which of these items you were either
20 personally in attendance for, or that you
21 personally prepared?

22 HEARING OFFICER GEFTER: Ms. Houck, this
23 table that you're referring to, it begins at page
24 13 in Mr. Hansmeyer's testimony, is that correct?

25 MS. HOUCK: Yes.

1 HEARING OFFICER GEFTER: Okay, so we're
2 looking at that table, and --

3 MS. HOUCK: and it goes through page 15.

4 HEARING OFFICER GEFTER: Okay, and which
5 item are you referring to?

6 MS. HOUCK: Just the list in general.
7 Is it listed specifically whether you were in
8 attendance or prepared these documents?

9 MR. HANSMEYER: I believe so. To
10 expedite, I will respond to your question. Item
11 number one, the telephone conversation dated
12 11/22,2001, was a personal conversation between me
13 and --

14 HEARING OFFICER GEFTER: I'm sorry, but
15 that's not -- you're asking yourself the
16 questions. Respond to her question. You want him
17 to go through each of these items?

18 MS. HOUCK: Yes.

19 HEARING OFFICER GEFTER: All right.

20 MR. HANSMEYER: Item number two,
21 3/27/2002, no I was not personally in attendance.
22 Item number three, the meeting 11/16/2002, I was
23 personally in attendance. Item number four, the
24 e-mail from Duane McCloud to Steve Bayley was not
25 from me. Item number five, the meeting on January

1 7th, 2003, I was in attendance.

2 Item number six, the letter from Fred
3 Diaz, my office received, I believe the addressee
4 was my client but I reviewed it personally. The
5 next one, the letter of 2/6/2003, I drafted that
6 letter, the addressee was Fred Diaz. The next
7 item, 3/26/2003 letter from myself to Fred Diaz.
8 4/22-2003, an e-mail from myself to Martha
9 Lennihan and Debra Corbett, is mine.

10 The meeting of 5/13/2002, I was not in
11 attendance. And the letter/memo of 5/21/2003 was
12 drafted by David Osias, I reviewed that document
13 prior to sending, but I did not personally draft
14 it.

15 MS. HOUCK: I would just ask that all
16 items that Mr. Hansmeyer did not have personal
17 knowledge of be stricken.

18 HEARING OFFICER GEFTER: On what basis?

19 MS. HOUCK: That Mr. Hansmeyer would
20 have to be testifying, that any testimony he
21 provided as to what occurred or characterization
22 of those meetings or documents would be hearsay.

23 MR. GALATI: I agree that the meeting on
24 the 27th where he has characterized what happened
25 at that meeting, that -- unless we have a witness

1 who was there, should be taken from his testimony.
2 But documents he's reviewed he has personal
3 knowledge of.

4 HEARING OFFICER GEFTER: The March 27th
5 meeting -- is that the one --

6 MR. GALATI: Yes, it looks like the
7 March 27th meeting he was not personally at.

8 MS. HOUCK: And I believe he indicated
9 he was not personally present at the May 13th
10 meeting as well.

11 MR. GALATI: I agree that that should be
12 stricken from his testimony.

13 HEARING OFFICER GEFTER: Okay, so 5/13
14 and 3/27 are stricken from the testimony.

15 MS. HOUCK: Now Mr. Hansmeyer, were you
16 present yesterday when Mr. Wong from Zone 7
17 testified?

18 MR. HANSMEYER: Yes I was.

19 MS. HOUCK: Do you recall Mr. Wong
20 making a statement that all approvals and
21 agreements would not be in place for several
22 months to two years?

23 MR. HANSMEYER: I remember that
24 statement.

25 MS. HOUCK: Do you believe that's an

1 accurate statement?

2 MR. HANSMEYER: Yes, because it's
3 arranged. In a best case scenario three months,
4 in a worst case scenario two years, I think that's
5 fair.

6 MS. HOUCK: And do you agree that Zone 7
7 still has outstanding approvals that would need to
8 be made prior to any water being delivered to Zone
9 7?

10 MR. HANSMEYER: Well, the final
11 agreement, the water supply agreement, will only
12 be approved by Zone 7's board. The change in
13 point deliver agreement would still need to be
14 signed off on DWR, although they've been
15 intimately involved in the construction of that
16 document.

17 MS. HOUCK: So Zone 7 still has
18 outstanding approvals?

19 MR. HANSMEYER: Certainly, and will
20 right up to the time the contract's executed.

21 MS. HOUCK: And DWR still has
22 outstanding approvals that would need to occur
23 before water could be delivered?

24 MR. HANSMEYER: Yes it does.

25 MS. HOUCK: Does there need to be a

1 wheeling agreement arranged with DWR for this
2 water to be delivered?

3 MR. HANSMEYER: No, because we're doing
4 it as an exchange agreement between state water
5 project contractors. It's within the state water
6 project's jurisdiction of their contractors to do
7 this form of exchange. Thereby, it's project
8 water.

9 Wheeling applies to non-project water
10 that uses the transmission facilities as a means
11 of transfer. If we were to buy -- say we were to
12 take the Tracy supply and deliver it to the plant,
13 and use the aqueduct, that would be wheeling. But
14 this is project water that's already in the
15 aqueduct, subject to exchange in jurisdiction in
16 DWR.

17 MS. HOUCK: Okay, thank you. In your
18 testimony you've raised concerns that all local
19 and state approvals were not in place for use of
20 the reclaimed water?

21 MR. HANSMEYER: That's correct.

22 MS. HOUCK: Would most of these
23 agreements be considered fairly standard
24 agreements?

25 MR. HANSMEYER: I'm sorry, would most --

1 MS. HOUCK: Would most of the
2 outstanding agreements be similar to those that
3 are outstanding with the Kern water supply?

4 MR. HANSMEYER: No.

5 MR. HANSMEYER: Can you describe what
6 would be outstanding?

7 MR. HANSMEYER: Yes, it goes to the due
8 diligence request. From what I understand from
9 the city of Tracy, the proposal to date is a
10 supply of treated wastewater with an interim
11 supply of groundwater. Those are not the sources
12 that we contracted for with Kern County.

13 In Kern County we're using high flow
14 flood water not subject to state board
15 jurisdiction, and not subject to subsequent
16 approvals. I am not, and I am not in a position
17 today -- because I don't have adequate information
18 before me -- to assess what types of regulatory
19 approvals are available. I don't know who the
20 other users are in this groundwater basin. I
21 don't know what type of third party challenges
22 could come up.

23 For example, although we understand
24 today the discharge of Tracy water into the old
25 river is a problem with the NPDS permit, and it's

1 an unwanted source. Once this water is treated to
2 tertiary level and is Title 22, there could be
3 third party claims that would arise to that water
4 supply, and other uses locally that could compete.

5 I can't, at this point, assess whether
6 or not this water will truly be available with
7 those uncertainties. That's why we requested from
8 legal counsel from the city of Tracy to either
9 provide us due diligence documents so we can
10 conduct the research on our own, or in lieu of
11 those provide us with contract assurances that
12 these are not going to be our issues.

13 MS. HOUCK: What documents would you
14 need to conduct a due diligence verification?

15 MR. HANSMEYER: First of all, I need a
16 very clear and final resolution from the city that
17 says exactly the sources of water that are going
18 to be supplied for the entire term of the project.
19 I'm referring to the city's resolution that they
20 passed in January, it refers to the city may
21 provide groundwater or other supplies.

22 And that's not comfortable for me. If
23 it's going to be groundwater from a specific
24 aquifer I need all known hydrology on that
25 aquifer, I need identification of any of the

1 existing users, I need to know if there's going to
2 be any groundwater draw that I'm pumping.

3 In Steve Bayley's testimony he pointed
4 out that they could do this for a year, but we
5 know that timing is an issue. What if it's longer
6 than a year, what happens then to that aquifer and
7 other users? We can't have drawdown. The interim
8 supply, I don't know exactly where this water
9 comes from.

10 In Kern County the water is high flow
11 water that is injected into, or percolated down
12 into the aquifer, and then transferred. It
13 retains its category of --

14 MS. HOUCK: Okay, I guess -- I think
15 you've gone beyond what I've asked. I've asked
16 what are the documents you would need, not --

17 MR. HANSMEYER: And I'm trying to
18 answer. The documents I need are all of this.

19 MS. HOUCK: I haven't heard what
20 specific documents, other than there's a report --

21 MR. HANSMEYER: I can't give you
22 specific documents because I don't know the
23 specific source.

24 MS. HOUCK: Would that be something that
25 should be fairly standard that you should be able

1 to resolve with the city of Tracy?

2 MR. HANSMEYER: I thought it would be
3 standard in January, but I don't have them now.

4 MS. HOUCK: And it was you testimony
5 earlier that the city has not provided you the
6 items you've requested earlier?

7 MR. HANSMEYER: No. It's provided me
8 the one, and I'm sorry that the -- you were
9 accurate in the prior testimony with Derrel Grant.
10 It's the report, one of the groundwater reports
11 that had to do with groundwater modeling and
12 managing I do have. It's insufficient to make
13 this determination.

14 MS. HOUCK: It's insufficient. And have
15 you asked the city for any additional documents?

16 MR. HANSMEYER: Yes I have. Not
17 specific documents, again. I'm being asked to
18 provide a level of specificity when I haven't been
19 given any degree of certainty to my source, and to
20 where the water's going to be. I'm really
21 looking --

22 MS. HOUCK: Okay, just to back up. My
23 understanding was you needed those documents,
24 though, to reach a level of certainty?

25 MR. HANSMEYER: Correct.

1 MS. HOUCK: But you don't know what
2 those documents are that you would need?

3 MR. HANSMEYER: I know the type and
4 category of the documentation that I need.

5 MS. HOUCK: Can I have, can you state a
6 list of what you need?

7 MR. HANSMEYER: Certainly. Let's refer
8 to the exhibits, which are my two letters. The
9 first of which, dated February 6, 2003.

10 HEARING OFFICER GEFTER: And what
11 exhibit number is that?

12 MR. HANSMEYER: I'll leave it to counsel
13 to --

14 MR. GALATI: Is that your testimony,
15 exhibit 45?

16 MR. HANSMEYER: No, that one is --

17 MR. GALATI: What's the date of the
18 letter, Chris?

19 MR. HANSMEYER: It is February 6th,
20 2003. You can disregard the proceeding and
21 following language, and focus on the numbered
22 paragraphs.

23 HEARING OFFICER GEFTER: That is exhibit
24 152?

25 MR. HANSMEYER: That is exhibit 152.

1 HEARING OFFICER GEFTER: And then
2 there's another letter from you, exhibit 153?

3 MR. HANSMEYER: The second letter is
4 dated March 26, 2003. That letter has more to do
5 with the types and varieties of contract terms
6 that we --

7 HEARING OFFICER GEFTER: Okay, we can
8 read the letters.

9 MR. HANSMEYER: I'm being asked to
10 specify what documents --

11 HEARING OFFICER GEFTER: Strike the
12 answer. These two letters list the request you
13 made to the city for specific documents?

14 MR. HANSMEYER: Right. And the third
15 letter, which I have not -- which Darcy's
16 attempted to strike from my testimony, was that of
17 May 13th, the memo to Martha from my partner,
18 David Osias, that had more specific requests for
19 certain documents. So if I can reference them
20 now --

21 MS. HOUCK: The May 13th item is listed
22 as a meeting, not a letter.

23 MR. HANSMEYER: Yes, we clarified to
24 that, technically it's a memo. It's not sent in a
25 letter form with a letterhead, it's sent

1 electronically with a cover sheet.

2 MR. GALATI: Yes, it is May 21st, is the
3 date of the communication.

4 HEARING OFFICER GEFTER: That's the last
5 item listed on page 15 of Mr. Hansmeyer's
6 testimony?

7 MR. GALATI: Exhibit 154.

8 MS. HOUCK: Okay. Mr. Hansmeyer just
9 stated it was a May 13th that should have been
10 listed as a letter, not a meeting, but there's
11 also a May 21st entry on this chart.

12 MR. GALATI: I'm sorry, I've done it
13 again. It's the May 21st --

14 MS. HOUCK: And what I asked to have
15 stricken was the May 13th --

16 HEARING OFFICER GEFTER: And that has
17 been stricken. And I want one person to speak at
18 a time please.

19 MR. GALATI: If I could just identify,
20 that is exhibit 154.

21 HEARING OFFICER GEFTER: Thank you. So
22 there are three exhibits where Mr. Hansmeyer or
23 Mr. Osias have requested documents from the city,
24 is that correct?

25 MR. GALATI: That's correct.

1 MS. HOUCK: And those documents
2 encompass the information you would need from the
3 city to be able to begin crafting contract terms?

4 MR. HANSMEYER: That's correct. To
5 start the due diligence I need these documents.
6 Once I've reviewed them then I'll be in a position
7 to know more fully what are the documents I need.

8 MS. HOUCK: But those are the documents
9 you need, and --

10 MR. HANSMEYER: Correct.

11 HEARING OFFICER GEFTER: Mr. Hansmeyer,
12 I'd like to admonish you, just answer yes or no
13 without a lot of explanation unless the attorney
14 asks you for explanation.

15 MS. HOUCK: Earlier in your testimony
16 you stated that you had contracted with the Kern
17 County water agencies?

18 MR. GALATI: I'd object, that's a
19 mischaracterization of his testimony.

20 MS. HOUCK: Well, that's what I'm asking
21 for clarification on. Is there a contract that
22 exists with the water agencies at this point?

23 HEARING OFFICER GEFTER: Between FPL --

24 MS. HOUCK: Between FPL and Rosedale-Rio
25 Bravo.

1 MR. HANSMEYER: I need more specificity.

2 By contract, say to be a --

3 MS. HOUCK: Okay, are you under
4 contractual relat --

5 MR. HANSMEYER: Yes we are.

6 MS. HOUCK: I would ask that the witness
7 not object to --

8 MR. HANSMEYER: I'm just trying to
9 answer --

10 HEARING OFFICER GEFTER: Off the record.
11 (Off the record.)

12 HEARING OFFICER GEFTER: Back on the
13 record.

14 MS. HOUCK: You stated earlier that you
15 had contracted for the Kern water. Is there a
16 final contract in place for that water?

17 MR. HANSMEYER: If I can correct the
18 misrepresentation?

19 MS. HOUCK: Yes.

20 MR. HANSMEYER: I did not say that, no,
21 I did not say that.

22 MS. HOUCK: So there's not a final
23 contract in existence, is that correct?

24 MR. HANSMEYER: No, and may I explain?

25 MS. HOUCK: Yes.

1 MR. HANSMEYER: I'm concerned with what
2 could be interpreted as a broad interpretation of
3 contract. If the question is is there a contract
4 that has been executed for the delivery of water
5 to the Tesla Power Project with the Rosedale-Rio
6 Bravo and Buena Vista water districts, the answer
7 is no.

8 If the question is is there some lesser
9 form of agreement in the form of a letter of
10 intent or some sort of a document that expresses a
11 willingness of the parties to enter into
12 negotiations as well as memorializes certain basic
13 terms, yes there is.

14 MS. HOUCK: So is there an agreement in
15 place that would somehow obligate or bring FPL to
16 accept this water?

17 MR. HANSMEYER: No.

18 MS. HOUCK: And if FPL were to enter
19 into an agreement with Kern County is it possible
20 that there could be some third party that has
21 rights to that water that could challenge that
22 contract?

23 MR. HANSMEYER: No.

24 MS. HOUCK: There's no possibility of
25 any challenge to that contract?

1 MR. HANSMEYER: No and can I explain?

2 MS. HOUCK: Not if you're going to -- I
3 mean, I don't want a legal, I mean I think --

4 MR. HANSMEYER: I'll stay out of the
5 legalese. The answer is no, and the reason -- the
6 districts, in an effort to get a premium price on
7 the contract, have negotiated memorandums of
8 understanding with all of the adjoining agencies
9 and gotten signoff by the Kern County Water Agency
10 prior to offering the water to us, in an effort
11 again to provide the most reliable and high-cost
12 water, they've gotten all necessary agreements
13 with their adjoining districts that could
14 potentially be third party challenges.

15 MS. HOUCK: So there's no possibility of
16 any challenge to the --

17 HEARING OFFICER GEFTER: I think the
18 question was asked and answered.

19 MR. GALATI: And in fact you're asking
20 him legal opinion now.

21 HEARING OFFICER GEFTER: Yes.

22 MR. HANSMEYER: To the best of my
23 knowledge, no.

24 MS. HOUCK: Well, I mean, he had
25 testified --

1 HEARING OFFICER GEFTER: Off the record.

2 (Off the record.)

3 HEARING OFFICER GEFTER: Back on the
4 record.

5 MS. HOUCK: To state the, what I believe
6 is the relevance of this, Mr. Hansmeyer had
7 testified earlier that he was concerned about
8 potential third party challenges if the city of
9 Tracy were to provide interim water supply. And I
10 wnote to know if those same concerns exist
11 regarding the Kern County water supply.

12 MR. HANSMEYER: To the best of my
13 knowledge, no.

14 MS. HOUCK: Thank you. And then I have
15 some questions that I think maybe Mr. Jones may be
16 the appropriate person to answer. Has the state
17 water project, specifically referring to the
18 bank's pumping plant, ever ceased pumping because
19 of salinity in the delta, to your knowledge?

20 MR. JONES: No.

21 MS. HOUCK: Is it possible that it would
22 have to stop pumping due to salinity levels in the
23 delta?

24 MR. JONES: Not based on my work.

25 MS. HOUCK: When you testified earlier

1 you discussed a leak that occurred in the state
2 water project some time ago, you described this,
3 and you said that they were able to continue
4 pumping I believe 114 CFS, is that correct?

5 MR. JONES: Through temporary pumping
6 measures.

7 MS. HOUCK: What's the normal volume of
8 pumping at the bank's pumping station?

9 MR. JONES: That's in my testimony,
10 exhibit --

11 MR. GALATI: 45.

12 MR. JONES: 45. I'll refer to that now.
13 It's in table WT2 of exhibit 45, page six. For
14 the year 2000 the average flow from point to
15 pumping plant was 3,744,257 acre-feet for the
16 year.

17 MS. HOUCK: So the standard CFS level
18 that would go through the pumping station would be
19 -- is it on the chart you have on page six?

20 MR. JONES: The CFS varies throughout
21 the year.

22 MS. HOUCK: What is the range that it
23 would vary from?

24 MR. JONES: I can't answer that right
25 now, I'd have to refer back to engineering report.

1 I mean, it could go as low as zero, for example,
2 if there is an unanticipated outage. It can go up
3 to a maximum of 6,680 CFS, as shown in Table WT2
4 of exhibit 45.

5 MS. HOUCK: Does the Tesla Power Project
6 supply have a priority over all other users so
7 that it's guaranteed that it would be granted?

8 MR. GALATI: I think that calls for a
9 legal conclusion on priority that I don't, this
10 witness cannot answer.

11 HEARING OFFICER GEFTER: The objection
12 is sustained.

13 MS. HOUCK: In your contractual
14 agreements with Zone 7 have you discussed it,
15 including anything that would allow Tesla Power
16 Project to have a priority?

17 MR. GALATI: Can Mr. Hansmeyer answer
18 that? Mr. Jones is not a party to those
19 contracts.

20 MS. HOUCK: Yes.

21 MR. HANSMEYER: Yes, and may I expand
22 upon that?

23 HEARING OFFICER GEFTER: Mr. Hansmeyer,
24 explain it in factual terms, whatever the visions
25 of the agreements state, without an opinion on

1 those.

2 MR. HANSMEYER: Okay, this line of
3 questioning as to contractual guarantees contained
4 in an agreement or a proposed agreement with Zone
5 7 is just a little bit of a miscommunication. All
6 of those contractual guarantees, including
7 priority, exist and are binding upon the
8 districts.

9 Zone 7 is merely a party to the
10 agreement to facilitate the exchange. We are not
11 asking Zone 7 to provide any form of guarantee,
12 nor will we, because we have those guarantees
13 bound in the contract with the district.

14 MS. HOUCK: So you're saying there's
15 contract terms included in a contract for the
16 water that would give you priority over other
17 users for water going through the bank's pumping
18 station?

19 MR. HANSMEYER: No, and then I'll
20 clarify. We have provisions in the contract that
21 provide us a highest priority of all other uses of
22 this water, and the entitlement of the districts,
23 as it relates to the district's water and the
24 state water project.

25 They have a priority table A

1 entitlement, and subject to -- as we testified
2 previously -- the state water project dropping to
3 15 or below, we believe that that priority is
4 sufficient to supply the plant. Therefore we
5 don't need priority other than our users because
6 we are another table in use.

7 MS. HOUCK: So you believe that if there
8 was a situation where the bank's pumping station
9 can only pump at 114 CFS that, irregardless of
10 priority, you would be able to have water
11 delivered to the Tesla Power Project?

12 MR. HANSMEYER: I can't answer that
13 question. One, it calls for a legal conclusion
14 again as to priority, and as to the technical
15 availability of that water Dave Jones or Duane
16 McCloud is a more appropriate --

17 HEARING OFFICER GEFTER: Let me ask for
18 clarification. When you indicated that the water
19 that goes to the district is priority A -- and I
20 understand from your testimony then that, under
21 the agreements with the districts, that the Tesla
22 Power Plant basically is segregated by the
23 district's priority A status, and you become the
24 surrogate to that status. Is that --

25 MR. HANSMEYER: When you step into the

1 shoes of the district and are purchasing their
2 rights on the project and become --

3 HEARING OFFICER GEFTER: So you become
4 priority A?

5 MR. HANSMEYER: Correct. And that's
6 based on consultation with DWR.

7 HEARING OFFICER GEFTER: Thank you.

8 MS. HOUCK: And these are all
9 assumptions based on the terms of contracts that
10 are not binding at this time, as they have not
11 been entered into, is that correct?

12 MR. HANSMEYER: That's correct.

13 HEARING OFFICER GEFTER: Do you have
14 documents that show the tentative agreements that
15 you have as a district?

16 MR. HANSMEYER: Yes we do and they're
17 public.

18 HEARING OFFICER GEFTER: And they are
19 public?

20 MR. HANSMEYER: Yes, and --

21 HEARING OFFICER GEFTER: Okay, we can
22 talk about that. I just wanted to know if they
23 are in writing and they are available to look at.

24 MR. HANSMEYER: Yes. Prior to this
25 date, and in response to Ms. Houck's prior

1 questioning, the documents at one point in time
2 were confidential, in order to facilitate
3 continued negotiations. Zone 7 is a public
4 agency, we have to provide Zone 7 with a redacted
5 version of the proposed contracts.

6 Zone 7 has that, therefore the
7 confidentiality is not longer an issue. The
8 relevant terms as to price, priority, reliability,
9 have all been discussed by staff, and we are in a
10 position to provide a redacted version of the
11 proposed contract with the district at this time.

12 MS. HOUCK: And that's as of, as of
13 today?

14 MR. HANSMEYER: It's as of today it's as
15 of the minute those documents were made available
16 to Zone 7 in a redacted form they lost their
17 confidentiality as to those terms. Since that
18 time we have not received a request from the
19 Energy Commission or staff for those documents.

20 We're now being asked for them, and we
21 can provide them.

22 HEARING OFFICER GEFTER: Well, okay, off
23 the record.

24 (Off the record.)

25 HEARING OFFICER GEFTER: Back on the

1 record.

2 MS. HOUCK: I have some questions that
3 probably are more directed at Mr. McCloud?

4 HEARING OFFICER GEFTER: Okay, Mr.
5 Galati has a statement first.

6 MS. HOUCK: Oh, okay, I apologize.

7 MR. GALATI: The Applicant had been
8 asked to provide documents evidencing the
9 contractual relationships with the downstream
10 districts, and specifically Kern County districts.

11 We agreed to provide those documents to
12 the Committee subject to any claim of
13 confidentiality. We certainly will identify for
14 you those items of the contracts that are no
15 longer confidential, based on our providing those
16 terms to Zone 7.

17 HEARING OFFICER GEFTER: Thank you. And
18 can you give us a time when you can provide those
19 documents? Off the record.
20 (Off the record.)

21 HEARING OFFICER GEFTER: Back on the
22 record. Mr. Galati?

23 MR. GALATI: We can provide those
24 documents by the middle of next week.

25 HEARING OFFICER GEFTER: Thank you. Ms.

1 Houck, do you have additional cross-examination?

2 MS. HOUCK: Yes I do. I have one last
3 question related to the contract terms, and then
4 I'll move on to some other issues. And this may
5 be a question that Mr. Grant would be willing to
6 answer.

7 You had stated earlier in your testimony
8 that you must have certain terms in this contract,
9 and then you listed certain things, is that
10 correct?

11 MR. GRANT: That's correct.

12 MS. HOUCK: Is FPL willing to be
13 flexible in working with the city in reaching
14 mutually agreeable terms that would protect both
15 parties interests?

16 MR. GRANT: Most definitely. Yes.

17 MS. HOUCK: Thank you. And could they
18 vary from the ones that you had mentioned earlier,
19 as long as they protected both parties' interests?

20 MR. GRANT: Which ones, because I listed
21 nine?

22 MS. HOUCK: I mean, just all of them.
23 Are you willing to be flexible in addressing
24 language that meets both parties' concerns?

25 MR. GRANT: It's a negotiation, yes.

1 MS. HOUCK: So you're not unilaterally
2 dictating terms in listing those nine.

3 MR. GRANT: I'm glad the way you
4 factualize it, yes.

5 MS. HOUCK: Okay, thank you. Okay, I
6 think Mr. McCloud may be the appropriate person to
7 answer the next question. In providing your
8 updated capital and operating costs for the ZLD
9 treatment system, were the costs relative to
10 Tracy's reclaimed water based on a TDS of 1,020
11 milligrams per liter?

12 MR. MCCLOUD: Yes they were.

13 MS. HOUCK: Okay. If Tracy's reclaimed
14 water were to have a TDS of about 600 milligrams
15 per liter would this significantly reduce the
16 capital and operating costs you provided?

17 MR. MCCLOUD: Yes it would.

18 MS. HOUCK: And would that be similar to
19 the quality of the water that Kern County would be
20 providing?

21 MR. MCCLOUD: No it would not. Based on
22 records that we have from DWR, the aqueduct
23 typically runs on the order of about 275 ppm TDS
24 versus 600. It would be a higher cost associated
25 with the higher TDS water from Tracy. However, it

1 would be lower than the previous assumption of
2 over a thousand.

3 MS. HOUCK: In consideration of the 8.3
4 million gallon onsite water storage tank, if the
5 Tesla Power Project were to incur -- if there were
6 to be a supply interruption in excess of one day
7 during July or August peak period conditions,
8 could this cause either a curtailment or shutdown
9 of the Tesla Power Project's production?

10 MR. MCCLOUD: The -- and I think this is
11 well-documented in other exhibits -- if the water
12 supply to the plant itself, and now I'm
13 essentially talking about what's coming down the
14 pipe in the road, and I'm not covering the other
15 issues about the aqueduct, the tank we have onsite
16 is sufficient for roughly two days under average
17 conditions operation, and just over one day under
18 peak condition operations.

19 MS. HOUCK: And that water tank would be
20 the sole backup source of water at this point in
21 time?

22 MR. MCCLOUD: Under our proposal, as
23 outlined in the AFC, yes.

24 MS. HOUCK: And that water could be used
25 as a backup supply if you were receiving reclaimed

1 water as well?

2 MR. MCCLOUD: Yes it could.

3 MS. HOUCK: Mr. Jones, based on the
4 information you have that the city of Tracy has
5 provided, if you were to assume all their
6 information would be correct, in general would the
7 reclaimed water available from the city of Tracy's
8 recycled water treatment plant be considered a
9 highly reliable source of supply comparable to the
10 Applicant's proposed supply?

11 MR. JONES: In my analysis I have not
12 received any information on the proposed design of
13 the reclaimed water supply, but I can speak to the
14 concept of reclaimed water supplies in general.
15 Is that acceptable?

16 MS. HOUCK: Yes. And that would be
17 assuming that they would have the online date
18 indicated by the county and an interim water
19 supply available if necessary. The city, I
20 apologize.

21 MR. JONES: Based on my work with the
22 reclaimed water supplies for power plants, that is
23 a reliable source of water supply in general for
24 power plants.

25 MS. HOUCK: Thank you. And do you agree

1 that an 11-mile pipeline and pump station can be
2 designed and constructed to be highly reliable and
3 meet any requirements that the power plant would
4 need for water supply?

5 MR. JONES: Yes, properly designed and
6 constructed, yes.

7 MS. HOUCK: Okay, thank you. I have no
8 other questions at this time.

9 HEARING OFFICER GEFTER: Mr. Galati, do
10 you have redirect? And also, I know we have a
11 member of the public that wants to address us on
12 water. She has a time constraint. So after your
13 redirect we're going to allow our community member
14 to approach us and provide her comments to us.

15 Go ahead, Mr. Galati, ask your redirect.

16 MR. GALATI: Mr. Jones, you were asked
17 some questions early on about what happens if the
18 bank pumping plant can't pump water. What
19 actually happens to the Tesla ability to get water
20 if the bank's pumping plant is not pumping?

21 MR. JONES: If Tesla Power Project were
22 to retain water from pool two of the state water
23 project, it could obtain water from the Bethany
24 Reservoir, which is pool one, and also pool two,
25 the state project.

1 MR. GALATI: Do you see any reason, in
2 your analysis, why during peak conditions the
3 aqueduct could not supply water, or any supply
4 outage would be more than one day?

5 MR. JONES: No, I do not see any reason
6 why there'd be any sort of outages based on my
7 work.

8 MR. GALATI: Mr. McCloud, you asked a
9 question about could the backup supply be provided
10 to the power plant utilizing the Kern County
11 supply, and your answer was yes it could. Do you
12 recall that?

13 MR. MCCLOUD: Yes.

14 MR. GALATI: At what cost?

15 MR. MCCLOUD: A good answer to that
16 question -- simply from an infrastructure
17 standpoint, because I have no idea if the
18 contractual requirements to obtain that supply as
19 a backup -- from an infrastructure standpoint a
20 turnout would still have to be constructed at the
21 California Aqueduct, no different than we had
22 under the base assumptions, the base plan, and
23 brought into the reclaimed water line, if we're
24 assuming the reclaimed water was the primary,
25 which was I believe is the basis of the question.

1 There would have to be, I would assume
2 again because we've never done this with DWR, but
3 normally there would have to be significant
4 provisions taken to make sure, for example,
5 reclaimed water did not backflow into the
6 California aqueduct.

7 The facilities required would probably
8 be pretty significant, and so I -- cost, I would
9 have to estimate two to three million dollars
10 would probably be a reasonable assumption.

11 MR. GALATI: That's for infrastructure
12 alone, correct?

13 MR. MCCLLOUD: Correct.

14 MR. GALATI: Do you know whether the
15 districts are willing to contract for a temporary
16 supply on any different terms than the permanent
17 supply?

18 MR. MCCLLOUD: To the best of my
19 knowledge a temporary supply has not been
20 discussed as an option with them, so I assume not.

21 MR. GALATI: Mr. Hansmeyer, have you had
22 any discussions with the district regarding
23 providing that supply as a backup supply?

24 MR. MCCLLOUD: Yes I have.

25 MR. GALATI: And did the district agree

1 to modify any terms on price or length?

2 MS. HOUCK: I would object that that's
3 hearsay, there's no one from the district here to
4 address what they did or did not agree to.

5 HEARING OFFICER GEFTER: Objection
6 sustained. If he has any knowledge, if they agree
7 to any offer that he made.

8 MR. GALATI: Did the district agree to
9 any offer you made for use of the current water
10 supply as a backup supply.

11 HEARING OFFICER GEFTER: His personal
12 knowledge.

13 MS. HOUCK: I would object. Mr.
14 Hansmeyer testified earlier that there's currently
15 no agreement between Kern County and FPL.

16 MR. GALATI: I used the term agreement,
17 and I'll define it. Has there been any
18 willingness, in any letter of intent or any other
19 contractual document like a memorandum of
20 understanding, in which the districts have been
21 willing to supply water as a backup supply on any
22 different terms than the permanent supply?

23 MR. HANSMEYER: If I could ask for
24 clarification of backup. Does it go to once Tracy
25 is in place and in use, would it be available if

1 that failed, or is it backup meaning that it's
2 available to us now until Tracy comes online?

3 MS. HOUCK: I would object. This seems
4 very speculative, and I don't see, or haven't seen
5 any agreements submitted as exhibits in the form
6 of any MOU's that Mr. Galati referred to.

7 HEARING OFFICER GEFTER: The objection
8 is sustained. We've gone way beyond the original
9 intent of the question here.

10 MR. GALATI: Ms. Houck asked Mr.
11 McCloud whether it was possible, and I'm trying
12 to show that, just because it's possible it's not
13 commercially possible.

14 HEARING OFFICER GEFTER: Well, at this
15 point you don't have an agreement in mind, is that
16 right?

17 MR. GALATI: That's correct.

18 HEARING OFFICER GEFTER: Okay. Mr.
19 Hansmeyer, there is no -- is that correct, there
20 is no agreement?

21 MR. HANSMEYER: That's correct.

22 MR. GALATI: Mr. McCloud, were you
23 present at the 3/27/2002 meeting with the city?

24 MR. MCCLOUD: Yes I was.

25 MR. GALATI: Have you seen Mr.

1 Hansmeyer's testimony?

2 MR. MCCLOUD: Yes I have.

3 MR. GALATI: Would you say that it is an
4 accurate characterization of that meeting?

5 MR. MCCLOUD: Yes I would.

6 MR. GALATI: No further questions.

7 HEARING OFFICER GEFTER: So you've
8 completed the testimony of your witnesses now?

9 MR. GALATI: That's correct.

10 HEARING OFFICER GEFTER: I'm going to
11 allow public comment right now, and then I know
12 Mr. Sarvey has some comments as well. Carole
13 Dominquez please? Just come up here to the table.
14 Thank you, just spell your name for us.

15 MS DOMINGUEZ: Carole C-a-r-o-l-e
16 Dominquez D-o-m-i-n-g-u-e-z. Thank you for
17 allowing me to interrupt the flow of the meeting,
18 I really appreciate that. I have to return to
19 work today, and of course most of the residents in
20 Tracy that are interested in these proceedings are
21 at work today.

22 I'm here today to speak for TRAQC,
23 Tracy's Regional Alliance for a Quality Community.
24 I would like to draw to the Commissioner's
25 attention comments made by Mr. Steve Bayley from

1 the city of Tracy about the provision of potable
2 water to the power plant.

3 First, the Commissioners must understand
4 that the Tracy city council has not had any public
5 review or approval by the city council of the
6 proposal set forth by Mr. Steve Bayley to give the
7 Tesla plant a one year or more supply of the
8 city's potable water. The availability of potable
9 water and water quality has been a serious issue
10 for our community for over the last five years.

11 As the city has approved thousands of
12 new homes without adequate water supply, it's
13 disturbing to see that city staff would come to
14 this hearing and present a plan that has not been
15 publicly presented to our community. It flies in
16 the face of the city's priority to provide quality
17 water to its citizens at reasonable prices.

18 The city is facing lawsuits from
19 residential developers. The city has had to
20 scramble to find water. To meet demand from
21 excessive and ill-conceived residential growth the
22 city has raised water fees for our residents,
23 significantly drawn down on city wells, depleting
24 our water table, and is still facing appeal of
25 court decisions right now over purchases of water

1 from two local irrigation districts.

2 The city water inventory report,
3 presented in July 2003, showed that the city does
4 not have any excess water. The community has been
5 told by the city council that any surplus water
6 will be used to recharge the groundwater aquifer,
7 which the city has depleted to serve excessive
8 residential growth.

9 For the city to represent to the
10 Commission and the plant developer that they are
11 going to supply potable water at no cost to the
12 plant for a period of one year or more is not
13 correct. It is a breach of the public trust.

14 Second, Mr. Bayley identifies a
15 significant increase in tertiary water between now
16 and 2007. That appears to contradict what the
17 actual growth that will be allowed under the local
18 voter approved Measure A.

19 We need specific clarification about the
20 tertiary water proposed to be shipped to the plant
21 relative to current users and production per user
22 of tertiary water, and the amount projected by
23 2007 and beyond, relative to projected users and
24 production per user.

25 Third, there is an assumption that the

1 cost of the transfer of tertiary water to the
2 plant will be borne by the city of Tracy. While
3 the city council did approve providing the
4 tertiary water to the plant there was no
5 discussion about the city bearing the cost to the
6 project, which should be rightly borne by the
7 plant developer.

8 Fourth, the city of Tracy's lack of
9 participating or effort towards requesting
10 negative impact mitigation from Florida Power and
11 Light on any aspect of this project is a betrayal
12 of the community for the sake of procuring a
13 customer for the transfer of tertiary water.

14 The citizens of Tracy will be the
15 ultimate payee in this deal. City of Tracy staff
16 is saying the residents of Tracy will pay for the
17 sewage treatment, transfer of tertiary water to
18 the plant, provision of potable water to the
19 plant, and indemnification of this deal?

20 And yet the city of Tracy will not
21 demand adequate mitigation from the plant for its
22 serious air quality impacts.

23 Even if the city of Tracy does not act
24 in the interest of its residents, the Commission
25 must carefully consider the direct requests of

1 Tracy residents. The fact remains that many of
2 the elements of the proposal presented by Mr.
3 Bayley have not been publicly reviewed and
4 approved.

5 The community has not been given due
6 process by our city council to examine and comment
7 on the transfer of potable water and costs
8 associated with the transfer, let alone
9 appropriate mitigation for the negative impacts
10 from the plant.

11 We will take that up with our city
12 council, but we ask the Commission not to act
13 hastily upon the premature proposals presented.

14 Therefore, TRAQC calls upon the
15 Commission to, number one, postpone any action or
16 acceptance of the city of Tracy's proposal to
17 transfer potable water to the Tesla plant until
18 there is appropriate city council and citizen
19 review and approval for such a plan.

20 Number two, recognize that Tracy city
21 officials sole interest in this project is to
22 transfer tertiary water to the Tesla plant. And
23 consider that the negative impacts of the plant on
24 the citizens of Tracy is being ignored by Tracy
25 city officials, and the citizens are not being

1 represented by those that we elected to represent
2 us.

3 Number three, act to form a citizen's
4 committee, comprised of Tracy citizens who have
5 previously expressed concern in these hearings
6 over the negative impacts of the plant to work
7 with the Commission's staff and Florida Power and
8 Light to work out a viable mitigation plan for the
9 Tracy community.

10 Please join with the citizens of Tracy
11 to reach a mutually equitable mitigation for our
12 community. Thank you. And I just want to
13 interject one thing. In terms of these water
14 needs, this is why we probably should go with a
15 dry cooling method. Thank you for your time.

16 HEARING OFFICER GEFTER: Thank you very
17 much. I have a question for you and your
18 organization. With respect to, as you're
19 suggesting, a committee of citizens to work with
20 our staff and with the Applicant to address
21 mitigation, what sort of mitigation measures do
22 you have in mind that would address your concerns,
23 if you can identify those for us?

24 MS DOMINGUEZ: I think for all aspects
25 of the project, but the primary one being air

1 quality. And I would like to see the citizens
2 that came to the preliminary hearing, and those
3 that would come to these hearings, be a part of
4 that process. Because I don't see the mayor here,
5 I don't see the council members here. The city
6 manager isn't here, the city attorney isn't here.
7 That says it all.

8 HEARING OFFICER GEFTER: We're going to
9 conduct hearings on the air quality hearings next
10 Thursday here in Tracy in this room, on the 18th.
11 And the hearings begin at 11:00 a.m.

12 MS DOMINGUEZ: Right. Thank you.

13 HEARING OFFICER GEFTER: We're going to
14 recess now, and then we're going to come back with
15 the staff's witnesses.

16 MS. HOUCK: I would just make a note to
17 the committee that John Kessler does need to leave
18 at 2:00 p.m.

19 HEARING OFFICER GEFTER: All right.
20 Thank you. This will be a short break, because I
21 think the lunch is here.
22 (Off the record.)

23 HEARING OFFICER GEFTER: Back on the
24 record. We're resuming with staff's direct
25 testimony. Ms. Houck?

1 MS. HOUCK: Yes, at this time I would
2 ask that the witnesses be sworn. And there are
3 four witnesses.

4 HEARING OFFICER GEFTER: And would they
5 state their names first and spell them for the
6 record.

7 MR. KESSLER: I'm John Kessler, last
8 name K-e-s-s-l-e-r.

9 MR. BAYLEY: Steve Bayley, S-t-e-v-e
10 Bayley B-a-y-l-e-y.

11 MS. UHLMAN: Kristine Uhlman, Kristine
12 with a K Uhlman U-h-l-m-a-n.

13 MR. MEDIATI: Tony Mediati, M-e-d-i-a-t-
14 i.

15 HEARING OFFICER GEFTER: Okay, will the
16 witnesses please be sworn.
17 Whereupon,

18 JOHN KESSLER, STEVEN BAYLEY, KRISTINE UHLMAN AND

19 TONY MEDIATI
20 were called as witnesses herein, and after first
21 having been duly sworn, were examined and
22 testified as follows:

23 HEARING OFFICER GEFTER: And we will
24 start with Mr. Kessler.

25 MS. HOUCK: Mr. Kessler, you've already

1 stated your name for the record. Is your
2 statement of qualifications attached to this
3 testimony?

4 MR. KESSLER: Yes.

5 MS. HOUCK: What is your job title?

6 MR. KESSLER: I'm a consultant to the
7 CEC, serving as a project manager for this
8 project, and also as one of those assigned for the
9 alternatives analysis, as well as the amendment to
10 the FSA.

11 MS. HOUCK: And can you briefly state
12 your experience in regards to conducting water
13 analysis?

14 MR. KESSLER: Certainly. Overall, I
15 have 24 years experience in water supply and power
16 generation, working in the utility public and
17 private sectors. My Bachelor of Science is in
18 civil engineering from UC Davis. I'm a
19 Professional Engineer in California.

20 I have reviewed or prepared about ten
21 staff assessments for the CEC over the last couple
22 of years, specific to water supply and power
23 projects. Darcie, did you want me to go into
24 detail on economic evaluations at this point?

25 MS. HOUCK: Yes, could you briefly

1 describe your experience and qualifications to
2 conduct economic analysis?

3 MR. KESSLER: For the duration of my
4 career I have been involved in performing economic
5 and risk analyses, both for the utility and the
6 water district that I was employed with. And
7 those analyses were performed both for feasibility
8 purposes and for management decision-making.

9 MS. HOUCK: Thank you. Did you prepare
10 the testimony entitled "water resource" in the
11 final staff assessment, exhibit 51, the first
12 addendum to the final staff assessment, exhibit
13 52, and the supplemental and rebuttal testimony of
14 staff listed as exhibit 54?

15 MR. KESSLER: Yes.

16 MS. HOUCK: And did you also participate
17 or prepare the appendix A to the water resources
18 section regarding alternative cooling analysis in
19 exhibit 51?

20 MR. KESSLER: Yes.

21 MS. HOUCK: Do you have any changes to
22 your written testimony at this time?

23 MR. KESSLER: Only to note that, as a
24 result of updating the economics as summarized in
25 my rebuttal testimony, that it does affect some of

1 the numbers that are reflected in the tables of
2 appendix A, alternatives on water supply and
3 cooling analysis. And that would apply to tables
4 3, 5, 6, and 7.

5 MS. HOUCK: And so the information you
6 will be relying on for purposes of your testimony
7 today can be found in which table?

8 MR. KESSLER: For the rebuttal testimony
9 we extracted just two alternatives and re-analyzed
10 those two. Those that have to do with alternative
11 three, the reclaimed water from the city of Tracy,
12 and alternative four, the freshwater from Zone 7.

13 So, with respect to focusing on those
14 two alternatives, the rebuttal testimony is the
15 most up-to-date information.

16 HEARING OFFICER GEFTER: And that's
17 exhibit 54?

18 MS. HOUCK: Exhibit 54, yes. And can
19 you summarize staff's analysis and conclusions?

20 MR. KESSLER: Yes. In reviewing the
21 project as a whole, we as staff conclude that
22 alternative three, recycled water supply from the
23 city of Tracy, is a feasible alternative, both
24 from an environmental, economical and technical
25 standpoint. And is also a reliable source of

1 water supply for the Tesla Power Plant.

2 We also found that this alternative is
3 consistent with LORS and state water policy, and
4 would achieve 100 percent conservation of fresh
5 water supplies for cooling process water and
6 landscape irrigation beginning in 2006 or
7 thereafter, whenever the plant may start up.

8 In light of expected fresh water
9 shortages in the state we could not recommend the
10 use of this limited resource for cooling as of the
11 freshwater source, when a recycled water source
12 was considered and determined to be feasible by
13 our analysis.

14 MS. HOUCK: And you stated earlier that
15 you prepared the table 5A attached to exhibit 54,
16 is that correct?

17 MR. KESSLER: Yes.

18 MS. HOUCK: And this table is limited to
19 looking at staff's analysis -- well, first, how
20 many options did staff look at in its alternative
21 cooling analysis outlined in exhibit 51?

22 MR. KESSLER: We looked at five
23 alternatives.

24 MS. HOUCK: And as a result of looking
25 at those five alternatives, what did staff

1 conclude?

2 MR. KESSLER: We concluded that the
3 reclaimed water from the city of Tracy was
4 entirely feasible, reasonable, and also comparable
5 with cost to the Zone 7 alternative.

6 MS. HOUCK: And the options you looked
7 at in table five, could you state which options
8 are listed in table 5A of exhibit 54?

9 MR. KESSLER: Table 5A only includes
10 alternatives 3 and 4 from table five.

11 MS. HOUCK: And can you explain why only
12 those options are looked at in that table?

13 MR. KESSLER: We received some updated
14 information -- would it be an appropriate time to
15 pass out copies of that table?

16 MS. HOUCK: Would parties like copies of
17 that table?

18 HEARING OFFICER GEFTER: Of table 5A of
19 exhibit 54?

20 HEARING OFFICER GEFTER: Do you need a
21 copy of the table, Mr. Galati?

22 MR. GALATI: This is the table that's
23 included in 54, or is it updated?

24 MS. HOUCK: It's the same table.

25 MR. GALATI: We have copies.

1 MS. HOUCK: I believe Mr. Sarvey needs a
2 copy.

3 MR. SARVEY: Thanks.

4 HEARING OFFICER GEFTER: Off the record.
5 (Off the record.)

6 HEARING OFFICER GEFTER: Back on the
7 record.

8 MS. HOUCK: Mr. Kessler, can you walk
9 through table 5A for us, and summarize the
10 conclusions that you reached based on the
11 information in this table?

12 MR. KESSLER: Yes. First, the reason we
13 felt compelled to update the information in the
14 table, particularly these two alternatives, was --
15 considering the availability of updated
16 information applicable to the water supply cost --
17 and also in recognition that the understanding
18 that the quality of the city of Tracy's reclaimed
19 water would actually be a higher quality than we
20 initially understood.

21 And that was a change from initially
22 1,020 milligrams per liter, or TDS, to an average
23 quality of approximately 600 milligrams per liter
24 of TDS. And as those individual cost elements
25 change it does affect the overall cost.

1 We also wanted to approach the cost
2 estimating from what we understood to be a low
3 estimate based on the best possible scenario and a
4 high estimate, based on what we considered to be a
5 worst case scenario. At least demonstrate that
6 there is no exact science to the cost estimating,
7 this is something that has varied over the course
8 of this proceeding over the last couple of years.

9 The Applicant was able to get some
10 updated quotes on some of their equipment and
11 operating costs and we've integrated those costs
12 into our financial analysis and have taken the
13 opportunity to try to present those as clearly and
14 succinctly as possible.

15 With respect to the pipeline cost, the
16 way the sheet is organized is we've summarized all
17 the capital items and then we go into the annual
18 costs and then show what that represents for a
19 total cost of the project.

20 But with respect to the pipeline the
21 source of the information was both from the
22 Applicant and then also from a living example from
23 Mountain House development just a few miles away.
24 An installation of a similar 30 inch diameter
25 pipeline.

1 There would be no freshwater pipeline
2 for, of course, the Tracy alternative, but we
3 previously assumed an initial cost of \$200 a
4 lineal foot for the freshwater pipeline. That
5 would be a smaller diameter because it's only a
6 1.7 mile run and it can overcome the friction
7 losses easier with the pumping energy than we can
8 with a longer run.

9 We also looked at the effect of-- the
10 \$200 per lineal foot was provided by the Applicant
11 in this case, and we also assume that there may be
12 an opportunity to reduce those costs to \$150 per
13 lineal foot.

14 The variability in construction costs on
15 things like a pipeline is really subject to a
16 couple things. The market conditions for the
17 contractors can be just a subject as to how hungry
18 they are at the time.

19 And the bid that we received in the case
20 of the Mountain House I was asked not to disclose
21 the contractor name, but it is from a large and
22 very well known contractor in the state that you
23 see often as you drive up and down the highway.

24 In the case of the reclaimed pipeline
25 that would -- again, it's a 30 inch diameter so

1 its unit costs are higher than the freshwater. We
2 used a range from 200 to 250 lineal foot. The
3 Applicant originally used 200 a lineal foot, and
4 we've actually bumped it up to 250 to reflect the
5 larger diameter and installation costs.

6 And then we looked at a best case
7 scenario of \$200 a lineal foot, which is
8 consistent with the actual experience of the
9 Mountain House community. The ZLD's, or zero
10 liquid discharge water treatment system, was a
11 source of updated information that the Applicant
12 had provided, and we used those numbers, except
13 that we prorated the numbers within that range of
14 Zone 7, the higher quality water, to the Tracy
15 water, the lesser quality water, to try and come
16 up with a reasonable estimate.

17 The worst case, we estimated that the
18 TDS would result in about a two and a half million
19 dollar increase in capital cost to deal with Tracy
20 or the Zone 7 alternative. The best case
21 anticipates that in cases where the actual delta
22 water quality that's delivered via Zone 7 is going
23 to be pushing at times close to 600 milligrams per
24 liter in TDS -- although that's not the annual
25 concentration over the year -- we understand that

1 that's something that, it can approach that value,
2 based on discussions with Mr. Bayley.

3 And in order to accommodate and treat
4 that level of water to the level that the power
5 plant would be, our belief that a system would
6 have to be designed at the ZLD to be able to have
7 a capacity to treat that lesser quality of water.

8 So in essence our belief is that the
9 Applicant would end up with, in reality, a similar
10 sized system for either quality of water, although
11 it wouldn't be treating the same average quality
12 over time.

13 The wet cooling tower was a cost
14 provided by the Applicant. That hasn't changed.
15 The Zone 7 infrastructure fund is something that
16 was recently provided by the Applicant in their
17 testimony.

18 So we have a subtotal of capital costs.
19 And if we compare alternative 3A with alternative
20 4A, the low estimates for Tracy and Zone 7
21 respectively, you can see that the almost \$52
22 million versus \$40 million, there's about a \$12
23 million difference under the best case. Under the
24 worst case we see a range from almost \$60 million
25 to about \$42 million, or about an \$18 million

1 spread.

2 So that's the picture of the capital
3 investments, as to how those can influence the
4 overall project cost.

5 Our analysis of water supply and
6 treatment costs is done on a plant whole basis, it
7 considers the process of the cooling water as a
8 whole, and the infrastructure to use that water
9 and to treat that water.

10 So it's also important from our view to
11 also consider the cost over the life of the plant,
12 the annual cost, the operating and maintenance
13 cost, so our next category is just that. The
14 annual pumping energy, O&M energy, reflects the
15 conveyance of the water from the source to the
16 power plant, those numbers haven't changed.

17 The water treatment operations are
18 numbers that we do have updated information from
19 the Applicant in their testimony, so for the most
20 part this is reflected except that we took, have a
21 different view of some of the individual sub-
22 items.

23 With respect to energy, we actually
24 broke it down to say that there is an internal
25 component of generation, which is most of the

1 time, and should the power plant be shut down we
2 understand the ZLD system needs to continue to
3 operate, so there would be a need to use some of
4 the standby power.

5 And so we actually looked at PG&E's
6 standard rate schedule S for standby power to
7 power plants for firm delivery of power, and also
8 delivery at a primary, since they would have their
9 own substation. This resulted in lower energy
10 costs that the Applicant had submitted in their
11 testimony.

12 We felt the weighted average would be on
13 the order of \$37.55 a megawatt hour, compared to
14 the, I believe it was a \$50 megawatt hour rate
15 that the Applicant had used.

16 We also looked at the chemical costs.
17 And the chemicals, again, are a function of what
18 is the quality of the water, particularly the TDS
19 level. And we used, prorated a range, based on
20 what we felt the quality of the Tracy water was.
21 We did not change the amount to the Zone 7.

22 With regards to parts and maintenance,
23 that was simply one percent of the construction
24 costs. Sludge disposal was another item that we
25 had a different view on. We felt that the

1 Applicant's generic reference to a Cal-EPA study
2 was not indicative of some opportunities to
3 actually save costs locally because there's
4 landfills, both classes two and three, that are
5 capable of receiving the salt cake that will be
6 the byproduct of the ZLD system.

7 And we were able to actually call waste
8 management of Dublin-Livermore and get a direct
9 quote as to what that sludge disposal would be.
10 So our rate, excuse me, the Applicant's rate was
11 based on I believe \$61 a ton. We were able to
12 actually get a quoted rate of \$50 a ton.

13 And not only did the unit cost of
14 hauling and disposing of the salt cake reduce, in
15 our estimate, but also the volume reduced of the
16 salt cake, because we believe Tracy will be able
17 to deliver a higher quality water than was
18 initially assumed -- again, the 600 versus 1,020
19 TDS.

20 The incremental manpower, the Applicant
21 believed that the size of the system, the ZLD
22 system, would be such that there would be a need
23 to have an additional person involved in operating
24 and maintaining that system.

25 Again, our view is that the size, the

1 capacity of the system will be largely the same,
2 because the Zone 7 water supply would still need
3 to pick up the deal and treat spikes on the TDS
4 level during the summer as is seen with delta
5 water.

6 The annual purchase cost for the fresh
7 water is a number directly provided by the
8 Applicant that's starting at \$360.50 per acre-
9 foot. I'll note that there is no inflation built
10 into this number, nor really any of the numbers in
11 this estimate. This is a simple real-time
12 estimate.

13 As they indicated, there will be
14 inflation in that particular number as there will
15 be with some other costs too. The annual purchase
16 cost for recycled water is based on information we
17 received from the city, starting at no cost, and
18 we assume for the first 15 years, and then
19 beginning in year 16 and beyond we used a cost of
20 range starting at \$50 an acre-foot for the low,
21 \$75 an acre-foot for the high estimate.

22 And that was converted to a value of
23 what the equivalent annual cost would be over a
24 30-year period, you know, that wouldn't begin
25 until year 16. The annual wet cooling operating

1 cost is a number directly from the Applicant out
2 of a data request.

3 So what we've done is, we then have a
4 subtotal for all the annual costs, this lower half
5 of the page of all these individual cost items.
6 And you can see from an annual basis that we
7 compare the low estimate from Tracy with the low
8 for Zone 7. You can see there's a savings of
9 about 1.1 million per year.

10 And how that equates on a present value
11 basis, as 7 percent the value of money, it equates
12 to about a \$16 million difference, where Tracy is
13 actually \$16 million less than the Zone 7
14 alternative for the annual cost component.

15 And similarly you can make that
16 comparison with a high Tracy estimate, and a high
17 estimate for Zone 7. In that case the Tracy
18 annual costs are about .8 million less on an
19 annual basis, about 10 million less on a present
20 value basis.

21 Then, to look at these initial capital
22 costs and the annual cost on one package basis, we
23 looked at what is the present value of all those
24 costs. Comparing the low with Tracy and the low
25 with Zone 7, we're seeing that Tracy is about,

1 we're estimating to be about \$4 million less than
2 Zone 7 supply.

3 On the high estimate we're seeing that
4 Tracy could be about \$8 million higher. We
5 believe that these estimates are probably plus or
6 minus 10-20 percent. There's a lot of opportunity
7 for variability, as we pointed out, due to actual
8 construction costs, some value engineering that
9 can be done, other vendor quotes that could change
10 between now and when the plant's constructed.

11 But the bottom line, we believe that the
12 costs are comparable, that the project, the Tracy
13 reclaimed water is entirely feasible.

14 And another way to compare these costs
15 is on what would be, in order to implement this
16 infrastructure for water supply, to treat the
17 water and to supply this water, we looked at what
18 would be the incremental effect on the power
19 production cost.

20 And that's the bottom line on this last
21 line item on the first page, you can see that
22 we're talking less than a hundredth of a cent per
23 kilowatt hour in difference in terms of the cost
24 of water supply.

25 We also took into account what we

1 believe is a reasonable estimate in outage or
2 interruptions in water supply that would exceed
3 the one day of onsite storage that the power plant
4 expects to have during peak conditions and then
5 the two days of onsite water storage and average
6 conditions.

7 And used an average interruption of two
8 days a year in the case of the Zone 7 water
9 supply, because our belief is that the aqueduct is
10 getting older and we will see -- it's 40 years old
11 now -- and it's the next few decades, we believe,
12 we'll see an increased frequency of interruptions.

13 And so we also build into this estimate
14 what would be the effect on economics due to lost
15 power revenues, not being able to generate during
16 those water interruptions. And with respect to
17 the dry cooling -- oh, excuse me, that's not here.

18 MS. HOUCK: Based on table 5A, and the
19 numbers you just went over, is it your
20 professional opinion that it would be economically
21 feasible for the Tesla Power Project to use
22 reclaimed water?

23 MR. KESSLER: Yes.

24 MS. HOUCK: And would it be technically
25 feasible in your opinion?

1 MR. KESSLER: Yes.

2 MS. HOUCK: And environmentally
3 feasible?

4 MR. KESSLER: Yes.

5 MS. HOUCK: And do you believe the cost
6 and estimates you came up with are comparable to
7 what the standard costs of using this type of
8 water supply would be?

9 MR. KESSLER: In my experience, yes.

10 MS. HOUCK: And if we were looking at
11 the original table, as set forth in exhibit 51,
12 where the TDS levels were considered to be higher
13 than those in table 5A, would it still be your
14 opinion that the project was economically easible?

15 MR. KESSLER: Yes.

16 MS. HOUCK: Thank you. And I guess I
17 would ask Tony Mediati?

18 MR. GALATI: Excuse me, Ms. Gefter, I
19 understand Mr. Kessler has to leave. I have no
20 problem crossing just --

21 HEARING OFFICER GEFTER: No, Mr. Kessler
22 can stay later now.

23 MR. GALATI: Okay.

24 MS. HOUCK: Mr. Mediati, were your
25 qualifications attached to the testimony submitted

1 in this proceeding?

2 MR. MEDIATI: Yes.

3 MS. HOUCK: And could you briefly state
4 your expericne in regards to conducting water
5 analysis?

6 MR. MEDIATI: Okay. I have a degree in
7 Forestry Resources Management from Humboldt State
8 University. I spent 15 years a a field forester,
9 eight of which were writing timber harvest plans,
10 which are CEQA documents, a functional equivalent
11 to an EIR. And I have two years of siting at the
12 Energy Commission.

13 MS. HOUCK: And did you prepare the
14 testimony, or assist in preparing the testimony
15 submitted in exhibits 51, exhibit 52, and exhibit
16 54?

17 MR. MEDIATI: Yes I did.

18 MS. HOUCK: And do you have any changes
19 in your written testimony?

20 MR. MEDIATI: No I do not.

21 MS. HOUCK: And do the opinions
22 contained in your testimony represent your best
23 professional judgment?

24 MR. MEDIATI: Yes they do.

25 MS. HOUCK: And do you have any

1 additions to the testimony you just heard from Mr.
2 Kessler?

3 MR. MEDIATI: No I do not.

4 MS. HOUCK: Okay, thank you. I also
5 have Ms. Uhlman available. Are your
6 qualifications attached to the testimony submitted
7 in the proceeding?

8 MS. UHLMAN: Yes.

9 MS. HOUCK: Can you briefly state your
10 education and experience in regards to water
11 resource analysis?

12 MS. UHLMAN: I hold an undergraduate
13 degree from the University of Arizona in
14 Hydrology, and a Masters in Civil Engineering from
15 Ohio State. I have 28 years experience, beginning
16 with U.S. Geological Survey in the Water Resource
17 Division, where I was trained in numerical
18 analysis of aquifer response.

19 And I've been working with the Energy
20 Commission as a consultant for the past two years.

21 MS. HOUCK: And did you assist in
22 preparing testimony marked as exhibit 51, 52, and
23 54?

24 MS. UHLMAN: Yes.

25 MS. HOUCK: And do you have any changes

1 to your written testimony today?

2 MS. UHLMAN: No.

3 MS. HOUCK: And do the opinions
4 contained in your testimony represent your best
5 professional judgment?

6 MS. UHLMAN: Yes.

7 MS. HOUCK: And can you briefly
8 summarize the conclusions in your testimony?

9 MS. UHLMAN: The focus of my analysis
10 was on the interim water supply to be provided by
11 groundwater from the city of Tracy. The
12 conclusion of my analysis is that, in the
13 unexpected but potential case of needing to have
14 interim potable water supply, interim water from
15 groundwater resources is available to support the
16 Tesla Power Project.

17 MS. HOUCK: Thank you. And staff is
18 also sponsoring Mr. Bayley as a witness, so I
19 would ask to conduct his direct examination, and
20 then make all the witnesses available for cross-
21 examination?

22 HEARING OFFICER GEFTER: That's fine.

23 MS. HOUCK: Mr. Bayley, can you please,
24 let's see -- was your statement of qualifications
25 submitted to this proceeding attached to staff's

1 prehearing conference statement?

2 MR. BAYLEY: Yes it was.

3 MS. HOUCK: And can you briefly state
4 your experience in regards to dealing with water
5 resource issues?

6 MR. BAYLEY: Yes. I'm the Deputy
7 Director of Public Works for the city of Tracy.
8 I've held this position since December of 1993.
9 I'm directly responsible for water supply and
10 wastewater treatment matters on behalf of the
11 city.

12 I'm a Registered Civil Engineer in the
13 state of California. I'm a certified Grade Five
14 Wastewater Treatment Plant Operator by the state
15 Water Resources Control Board. Prior to joining
16 the city of Tracy I worked for the city of San
17 Leandro on wastewater treatment and other
18 engineering matters for 16 years.

19 MS. HOUCK: And did you prepare the
20 testimony entitled "prepared testimony of Steven
21 G. Bayley, called as a witness by the California
22 Energy Commission," contained in exhibit 54?

23 MR. BAYLEY: Yes I did.

24 MS. HOUCK: And do you have any changes
25 to that written testimony?

1 HEARING OFFICER GEFTER: Uh, excuse me,
2 I think it's exhibit 55 where his testimony is
3 found.

4 MS. HOUCK: I apologize, 54 is staff's
5 supplemental and rebuttal testimony.

6 HEARING OFFICER GEFTER: And also I want
7 to separate out the testimony in 55, so we're
8 going to renumber the prepared testimony for
9 Steven Bayley as exhibit 55A, and then 55B will be
10 the testimony of Susan Jones. So we're referring
11 right now to exhibit 55A.

12 MS. HOUCK: And do you have any changes
13 to that written testimony?

14 MR. BAYLEY: A correction to my job
15 title, there's a typographical error.

16 MS. HOUCK: Okay, and what would be the
17 correct job title?

18 MR. BAYLEY: Deputy Director of Public
19 Works.

20 MS. HOUCK: Okay, so we would ask that
21 the word "assistant" be stricken. And do you
22 believe the opinions in your testimony represent
23 your best professional opinion?

24 MR. BAYLEY: Yes they do.

25 MS. HOUCK: Are you familiar with state

1 water project water quality?

2 MR. BAYLEY: I have some experience.

3 MS. HOUCK: And could you describe that
4 experience?

5 MR. BAYLEY: We were required to do an
6 analysis to see if the city of Tracy could switch
7 over the from the state water project as its
8 primary source of supply from the delta mendota
9 canal. We did one year of water quality testing
10 on the state water project, California Aqueduct,
11 and the Central Valley Project delta mendota
12 canal.

13 MS. HOUCK: And in your opinion will the
14 state water project water supply that the
15 Applicant proposes to obtain from Kern County
16 Water Agency and Zone 7 ever exceed 600 TDS?

17 MR. BAYLEY: Yes, I believe on occasion
18 it will.

19 MS. HOUCK: And does the Tesla Power
20 Project need water that is always less than TDS to
21 function?

22 MR. BAYLEY: My experience with
23 evaporative cooling indicates that 600 TDS is not
24 a constraint.

25 MS. HOUCK: And you just stated the

1 testimony submitted in exhibit 55A is your best
2 professional opinion, is that correct?

3 MR. BAYLEY: That is correct.

4 MS. HOUCK: And could you please
5 summarize that testimony?

6 MR. BAYLEY: Okay. On December 3rd,
7 2002 the city of Tracy adopted a resolution 2002-
8 488, that authorized city staff to enter into
9 negotiations for the Tesla Power Project, and
10 supported the use of recycled water for the Tesla
11 Power Project.

12 And the city of Tracy's wastewater
13 treatment plant is anticipated to be upgraded and
14 expanded regardless of whether the Tesla Power
15 Project utilizes recycled water for industrial
16 cooling or not. The city has taken measures
17 outlined in order to ensure that we have a project
18 completed in 2006.

19 Once construction is substantially
20 complete the wastewater treatment plant will be
21 able to deliver Title 22 water to the Tesla Power
22 Plant. The wastewater treatment plant is needed
23 to meet the stringent requirements in the delta
24 for discharging of wastewater.

25 We have an approved approval project in

1 the fiscal budget for the city of Tracy, and the
2 city anticipates calling for construction bids in
3 January of '04.

4 The city of Tracy's recycled water
5 supply, produced by the wastewater treatment
6 plant, will be very reliable because the city
7 needs to treat the wastewater on a virtually
8 continuous basis for water quality reasons. There
9 are numerous redundancy measures built into the
10 treatment facilities to ensure reliability.

11 And in conformance with state policy,
12 the city supports the reuse of recycled water in a
13 manner proposed for the Tesla Power Project. And
14 the city has made good faith effort to negotiate
15 an agreement with the Applicant, and remains
16 willing to work with the Applicant to develop
17 mutually beneficial agreement.

18 MS. HOUCK: And attached to your
19 testimony is an addendum entitled "past and
20 projected timing of events." And I believe you
21 summarized most of the items in that attachment.
22 Do you still see those dates as being fairly
23 accurate as to when the project would be online?

24 MR. BAYLEY: Yes I do.

25 MS. HOUCK: Do you anticipate anything

1 that would prevent the expansion from operating
2 and being able to provide reclaimed water to the
3 Tesla Power Project prior to June 2006?

4 MR. BAYLEY: No I do not.

5 MS. HOUCK: If for some reason the
6 project needed water before that, is the city
7 prepared to provide an interim water supply to
8 Florida Light and Power?

9 MR. BAYLEY: Yes, we are willing, and we
10 did a worst-case analysis, with Kristine's
11 calculations, to show that we can provide that
12 water supply concurrently with the other demands
13 on the city.

14 Now, because the schedules have been set
15 now for June of '06 for Tesla Power Project coming
16 online, we anticipate having additional potable
17 supplies of 10,000 acre-feet before that time.

18 Plus the fact that we think we will
19 complete the wastewater treatment plant upgrade
20 prior to that time, in some likelihood that an
21 interim supply will be needed. If it is needed,
22 though, we will have it available because we will
23 be substantially reducing our take on the
24 groundwater, because of the delivery of the
25 additional potable supplies.

1 So in conclusion, city staff would
2 recommend that the groundwater supply be made
3 available on an interim basis. However, it
4 appears unlikely that it will be needed.

5 MS. HOUCK: Now if the water were needed
6 in the city of Tracy, would the city of Tracy
7 absolutely limit the availability of that interim
8 groundwater supply to one year?

9 MR. BAYLEY: No.

10 MS. HOUCK: And to your knowledge would
11 there be any adverse impacts if the interim water
12 supply was needed for, say, two years for example?

13 MR. BAYLEY: If the potable supplies,
14 which are under construction right now, are
15 delivered, there would be no adverse impacts for
16 the delivery of the potable supply on an ongoing
17 basis. In the event that the potable supply was
18 not delivered, we did not analyze that situation.

19 MS. HOUCK: And where --

20 HEARING OFFICER GEFTER: May I
21 interrupt. Where would the potable supply be
22 delivered from?

23 MR. BAYLEY: South San Joaquin
24 irrigation District. We have a project that's
25 under construction now for delivery of 10,000

1 acre-feet of treated surface water. And that will
2 reduce our demand on the groundwater basin.

3 HEARING OFFICER GEFTER: And where would
4 that water be delivered?

5 MR. BAYLEY: It would be delivered to
6 the city of Tracy at the Linne & McArthur. We're
7 building a 7 million gallon storage reservoir at
8 that location.

9 MS. HOUCK: And if the wastewater
10 treatment plants were unable to provide the total
11 amount of water needed by the Tesla Power Project,
12 would the city of Tracy be able to supply any
13 additional water needed to make up the difference?

14 MR. BAYLEY: Yes we would be able to.

15 MS. HOUCK: You were here earlier when
16 Mr. Grant testified, is that correct?

17 MR. BAYLEY: That is correct.

18 MS. HOUCK: And did you hear the --
19 well, Mr. Grant indicated that there were nine
20 terms that they would want to see in a contract
21 between the city and FPL. Did you hear what those
22 terms were?

23 MR. BAYLEY: Yes I did.

24 MS. HOUCK: And has FPL provided the
25 city, before today, with a list of these terms?

1 MR. BAYLEY: No they have not.

2 MS. HOUCK: And is FPL presently
3 negotiating with the city to obtain a recycled
4 water supply for the Tesla Pay Project?

5 MR. BAYLEY: Not until yesterday.

6 MS. HOUCK: Were they previously, did
7 they have any previous discussions with you
8 regarding a reclaimed water supply?

9 MR. BAYLEY: We had numerous meetings,
10 which have been documented in the exhibits. They
11 were not very productive.

12 MS. HOUCK: And did FPL pursue these
13 negotiations any further?

14 MR. BAYLEY: Not in my opinion.

15 MS. HOUCK: And do you believe that the
16 terms of any agreement between FLP and the city
17 should be determined on a mutual basis between the
18 parties?

19 MR. BAYLEY: Yes I would like to work
20 with FPL to come up with mutually agreeable terms
21 for recommendation for approval by city council.

22 MS. HOUCK: And based on the concerns
23 that Mr. Grant raised today, do you think it would
24 be possible to come up with mutually agreeable
25 terms that would meet both parties concerns?

1 MR. BAYLEY: Yes I do.

2 MS. HOUCK: And in any agreement reached
3 between the city and FPL, who do you agree will be
4 paying for any costs the city may incur to provide
5 water to the Tesla Power Project?

6 MR. BAYLEY: For both the recycled water
7 and the interim water, the city staff is willing
8 to recommend that the water be provided for free
9 for, in the case of recycled water for 15 to 20
10 years, and then we thought that it would be
11 appropriate to have a charge included, a reopener
12 on that portion of the agreement.

13 We would provide the water supply for
14 free, we would ask FPL to fund the energy -- if it
15 was an intreima supply, the energy cost associated
16 with pumping that water from the ground, and for
17 the recycled supply we would expect them to
18 include this in their project, and pay for all
19 applicable costs related to the planning,
20 permitting, design and construction of the
21 facilities necessary to deliver the water supply
22 to their project.

23 MS. HOUCK: And is the city willing to
24 give FPL priority to the reclaimed water?

25 MR. BAYLEY: The city staff would be

1 willing to recommend that they have first priority
2 to the recycled water.

3 MS. HOUCK: Yesterday, were you present
4 and did you hear FPL representatives make a
5 statement as to wanting the city to fully
6 indemnify FPL for all power plant project costs?

7 MR. BAYLEY: Yes I did.

8 MS. HOUCK: And do you believe that
9 would be reasonable for FPL to request the city to
10 pay for costs incurred by the power plant as a
11 result of an interrupted water supply that was
12 outside the city's control?

13 MR. BAYLEY: No, it is not reasonable.

14 MS. HOUCK: And do you believe Mr.
15 Hansmeyer's written testimony accurately
16 characterizes the negotiations that have
17 previously occurred between FPL and the city?

18 MR. BAYLEY: No I do not.

19 MS. HOUCK: And can you provide
20 examples, please?

21 MR. BAYLEY: Okay.

22 MS. HOUCK: And can you refer to
23 Applicant's exhibit 154 that -- and also, exhibit
24 45. Exhibit 45 lists the chronological events
25 from Mr. Hansmeyer's perspective. And then

1 exhibit 154 lists the items that they've requested
2 from the county.

3 MR. BAYLEY: Yes. On page 13 of Mr.
4 Hansmeyer's, "Duane McCloud and Dave Jones met
5 with Eric Delmas and Steve Bayley on 3/27/02." I
6 was not in attendance at that meeting. I brought
7 my calendar with me.

8 I remember that day very well, I had a
9 meeting at 8:15 with Kevin Jorgenson, the chief
10 building official. I showed him the wastewater
11 treatment plant facilities were ADA compliant.
12 And then I followed that with a meeting with CH2M
13 Hill at the wastewater treatment plant regarding
14 the wastewater treatment plant expansion.

15 I remember seeing Duane at the site with
16 Eric Delmas, but I did not participate in the
17 meeting. And I don't think this characterizes --
18 they state here that "recycled water may be
19 available sometime between 2008 and 2012."

20 Maybe that's what the laboratory
21 technician told them, but I'm sure they've heard
22 from us many times before that it was 2006, and I
23 don't think it is characteristic to put that in
24 here when we've told them it was 2006.

25 Then, looking at the 11/16 meeting, that

1 happens to be a Saturday, I don't recall meeting
2 on a Saturday.

3 Regarding the e-mail on 1/3/2003, the
4 testimony says that the e-mail contains a
5 reference to the Applicant's willingness to pursue
6 a reclaimed water supply. The e-mail that I
7 received had no such reference. It was strictly
8 an engineering-type e-mail saying "these are what
9 the water demands will be."

10 On the letter dated February 6th, 2003,
11 the Applicant requested additional information.
12 We never received that letter, until it was faxed
13 to us in April. We log all our mail into the city
14 manager, and we have no record of ever receiving
15 that letter until April when it was faxed to us.

16 On the March 26th, 2003 letter it
17 contains unreasonable terms, such that "The Tesla
18 water supply will have priority over all of the
19 city's water delivery obligations, including but
20 not limited to deliveries for residential,
21 commercial, agricultural, and industrial uses."

22 They have a force majeure that says
23 "MPL" -- standing for Midway Power -- "payment
24 obligation shall be forgiven." They have, under
25 section 3.1.8, "required projects" they say "the

1 city has secured or will secure, prior to initial
2 delivery of the Tesla water supply, the financing
3 and governmental approvals for the necessary
4 projects and programs, including but not limited
5 to the following: written contracts or other
6 proof of entitlement to additional required water
7 supplies, the proposed financing or capital outlay
8 programs required for the delivery of the Tesla
9 water supply, etc."

10 And so, going back to the list, going
11 back to the February 6th letter from Chris
12 Hansmeyer, it says that they will have, "they are
13 currently reviewing the terms and conditions of
14 the letter we sent them on January 28th, and will
15 provide detailed comments shortly." We have never
16 received those comments.

17 Let's see. And then on the May 21st,
18 2003 letter from David Osias to Martha Lennihan,
19 they are claiming that we never supplied them
20 determination of costs associated with the
21 proposals. We told them in the meeting we had no
22 ability to calculate these costs and no way of
23 providing them, except for the city provision for
24 the cost of the water being at no charge.

25 So those are the exceptions I would take

1 to that testimony.

2 MS. HOUCK: Looking at exhibit 154, it's
3 my understanding -- again, you just testified as
4 to item number one in your meeting that at this
5 time you were not able to provide that
6 information? Or, can you address each item in the
7 list on exhibit 54?

8 MR. BAYLEY: Environmental Impact Review
9 -- we referred that one to the, or referred FPL to
10 the CEC staff, who were responsible for writing
11 the, we referred the request for their additional
12 environmental work to the CEC staff so they could
13 work on it, and subsequently they did the final
14 staff assessment supplement.

15 MS. HOUCK: Do you believe that any
16 environmental review documents that are produced
17 by the Commission would be sufficient for the
18 city's purposes in regards to environmental
19 review?

20 MR. BAYLEY: I believe the final staff
21 assessment, plus the supplement, would be adequate
22 for environmental purposes.

23 MS. HOUCK: Or the city would look at
24 those documents and consider their use?

25 MR. BAYLEY: We would consider them to

1 be substitute documents.

2 MS. HOUCK: As regards to the second
3 item, the Applicant stated earlier that they did
4 receive that, is that --?

5 MR. BAYLEY: That is correct.

6 MS. HOUCK: And regarding item number
7 three?

8 MR. BAYLEY: Regarding number three is
9 where they asked for additional -- the costs, the
10 high and low boundaries of the cost for the
11 groundwater supply with component costs for
12 additional infrastructure operation, maintenance,
13 repair, pumping costs and water supply costs.

14 You know, we told them that we could not
15 calculate those, because we did not know how. And
16 so that was their response, to calculate that
17 information.

18 MS. HOUCK: Have you reviewed the
19 staff's final staff assessment?

20 MR. BAYLEY: I have reviewed portions of
21 it.

22 MS. HOUCK: And have you reviewed
23 documents that the Applicant has submitted in this
24 proceeding concerning potential use of either the
25 reclaimed water supply or their proposed water

1 supply?

2 MR. BAYLEY: I have reviewed some
3 documents.

4 MS. HOUCK: And do you believe those
5 documents address cost for the reclaimed water
6 supply?

7 MR. BAYLEY: I believe the CEC staff's
8 costs are included in those documents.

9 MS. HOUCK: Okay, and the next item?

10 MR. BAYLEY: Is a backup supply
11 necessity, I was to talk to CEC staff and report
12 to Mr. Galati. I did talk to the CEC staff, I did
13 not report back to Mr. Galati. CEC staff said
14 that the backup supply would not likely be
15 required, that the recycled water supply was
16 reliable.

17 MS. HOUCK: And you just indicated
18 earlier that -- go on to the next item.

19 MR. BAYLEY: The next item was
20 reliability and supply assurance provisions. In
21 the FPL Rio Bravo Buena Vista water supply
22 contract. Dave Osias was to forward the relevant
23 contract provisions to Martha Lennihan and Debra
24 Corbett. To my understanding the documents were
25 never received.

1 MS. HOUCK: Okay, and what about the
2 term of the agreement?

3 MR. BAYLEY: The city would be willing
4 to consider a 35 year term, the reopener on the
5 cost, that's what we told them in the meeting.

6 MS. HOUCK: And the next item?

7 MR. BAYLEY: Wording of contract
8 provisions regarding force majeure indemnity,
9 reliability insurance. The city had it's real
10 estate attorney review force majeure and
11 termination, and they thought that if we could
12 come to agreement on the other points that these
13 would not be a issue.

14 MS. HOUCK: And the city is willing to
15 discuss the other points that still need
16 negotiation with FPL?

17 MR. BAYLEY: Yes we are.

18 MS. HOUCK: And did you provide this
19 information to FPL, regarding the conclusions that
20 you believe that certain aspects that they
21 proposed to you would likely be acceptable?

22 MR. BAYLEY: I don't believe I did.

23 MS. HOUCK: Okay.

24 MR. BAYLEY: I guess I need to issue a
25 clarification. I would defer to the city of Tracy

1 city attorney on the conclusions about the force
2 majeure and termination and any -- and I'm not
3 aware of any deficiency in the CEC documents.

4 MS. HOUCK: Okay. And you believe --

5 HEARING OFFICER GEFTER: I'm sorry, are
6 you then withdrawing that testimony of force
7 majeure, since it's a legal opinion?

8 MR. BAYLEY: Well, no I'm not. I need
9 to refer to the city attorney on the adequacy of
10 the CEQA documentation being the substitute
11 document. That's a clarification I should have
12 made.

13 MS. HOUCK: So in regards to the force
14 majeure testimony, could you please restate your
15 position as to the last item listed on --?

16 MR. BAYLEY: Yes. The city had a real
17 estate attorney review force majeure indemnity and
18 reliability assurance clauses that were provided
19 by FPL, and ones that we have in other agreements,
20 and thought that if we could come to agreement on
21 the major points of agreement, that we could solve
22 the wording of these contract provisions.

23 MS. HOUCK: Okay. Thank you.

24 HEARING OFFICER GEFTER: Does that
25 conclude your direct examination?

1 MS. HOUCK: Yes, that would conclude
2 staff's direct examination.

3 HEARING OFFICER GEFTER: Okay, the
4 witnesses are available for cross-examination by
5 the Applicant.

6 MR. GALATI: Mr. Bayley, do you know
7 what, if any regulatory approvals will be required
8 to give us the interim water supply that you've
9 identified?

10 MS. LENNIHAN: Objection, calls for a
11 legal conclusion.

12 HEARING OFFICER GEFTER: If you're just
13 asking Mr. Bayley if he knows -- Ms. Lennihan,
14 this is city's water attorney, and she has not
15 made an appearance. And at this point I will
16 allow Ms. Lennihan to object where there might be
17 some city exposure, or something relating to city
18 litigation.

19 But in terms of whether the witness
20 knows if there are any permits required, which was
21 the question -- and Ms. Lennihan, if you want to
22 make an appearance, just indicate who you are for
23 the record.

24 MS. LENNIHAN: Martha Lennihan, for the
25 city of Tracy. I have no objection to Mr. Bayley

1 responding to the question as long as it's clear
2 that he is responding in his capacity as Deputy
3 Public Works Director and is not giving a legal
4 opinion.

5 HEARING OFFICER GEFTER: That's fine.
6 Can you answer the question?

7 MR. BAYLEY: Reviewing the January 28,
8 2003 letter, regulatory approvals that we
9 identified at that time --

10 HEARING OFFICER GEFTER: And what
11 exhibit is that?

12 MR. BAYLEY: I don't have a number on
13 mine -- January 28th letter.

14 MS. HOUCK: It's exhibit 66.

15 MR. BAYLEY: The regulatory approvals
16 that I'm aware of include the Central Valley
17 Regional Water Quality Control Board, the state
18 Department of Health Services, San Joaquin County,
19 San Joaquin County LAPCO, Alameda County LAPCO,
20 Alameda County Zone 7 water agency.

21 MS. HOUCK: Just to clarify, I
22 apologize, I think it's actually exhibit 65 is the
23 letter from Tracy.

24 MR. GALATI: Okay? With respect to the
25 modifications that you're making to the plant, I

1 believe it's expansion and modification, is that
2 correct?

3 MR. BAYLEY: That is correct.

4 MR. GALATI: Are you compelled by some
5 permit to have this online by any particular date?

6 MR. BAYLEY: At the present time we do
7 not have a specified date.

8 MR. GALATI: Are you willing to
9 recommend to your city council that they enter
10 into another resolution -- and I'll go through
11 them one by one -- would you, just individually,
12 would you recommend that they enter a resolution
13 for a term fo 35 years?

14 MS. HOUCK: Well, I would just object to
15 clarify that earlier Mr. Grant said that he was
16 willing to be flexible in regards to conditions,
17 so, well, I would just --

18 MR. GALATI: I understand. What's the
19 longest term you're willing to recommend to the
20 city council?

21 MR. BAYLEY: We view these as items to
22 be negotiated in a mutual negotiation, as opposed
23 to in the hearing.

24 MR. GALATI: In staff's analysis they
25 used a cost for interim water supply of, I think,

1 \$50 per acre-foot and escalating to \$75 per acre-
2 foot. Are you familiar with that?

3 MS. HOUCK: I would object. I think
4 that's a mischaracterization of the testimony. My
5 understanding was the 50 to 75 dollars referred to
6 the potential reopener after 15 to 20 years, not
7 to the interim water supply.

8 MR. GALATI: I apologize. That's for
9 the recycled water after a termination of a 15
10 year zero cost, well, zero price, for the recycled
11 water, correct?

12 MR. BAYLEY: To my knowledge, yes.

13 MR. GALATI: Would you be willing to
14 recommend those numbers to city council?

15 MR. BAYLEY: We would like to do a
16 mutual negotiation with all terms considered.

17 MR. GALATI: You mentioned in your
18 testimony that you'd be willing to recommend,
19 possibly, that interim water could be provided
20 from the time FPL needed it, possibly longer than
21 12 months, is that correct?

22 MR. BAYLEY: In our letter of January
23 28th we committed, by letter, to say that if we
24 entered into an agreement we would be willing to
25 say that we could supply it until such time as the

1 recycled water supply came online.

2 MR. GALATI: And I think you testified
3 that you believed that longer than 12 month would
4 not be an impact?

5 MR. BAYLEY: Yes, there's a situation
6 where it could be an impact, there's a situation
7 where it would not be an impact. The most
8 probable situation is it would not be an impact.

9 MR. GALATI: When will that be
10 determined?

11 MR. BAYLEY: I believe the final
12 determination will be May of 2005, when the new
13 potable supply is delivered. But the project is
14 under construction now, so --.

15 MR. GALATI: Are you willing to
16 recommend to the city council to authorize you to
17 enter into a contract for up to 5,900 acre-feet a
18 year?

19 MR. BAYLEY: In the January 28th letter
20 we stated that we would be willing to supply all
21 the recycled water that Florida Power might need
22 at the Tesla Power Project. And yes, we would
23 consider that as one of the many terms that we
24 would recommend to city council.

25 HEARING OFFICER GEFTER: That's a

1 reference again to exhibit 65?

2 MR. BAYLEY: That is correct.

3 MR. GALATI: Would you recommend to the
4 city council the water quality should be Title 22
5 restricted use, no greater than 600 ppm TDS?

6 MR. BAYLEY: I would consider that as
7 one of the terms that need to be negotiated. Not
8 to exceed 600 TDS is, there may be times when it
9 would exceed 600 TDS, but if you define how and
10 for how long, there would be some consideration.

11 MR. GALATI: You identified several
12 governmental approvals, including approval of Zone
13 7. Can you explain that approval please?

14 MR. BAYLEY: Sure. Zone 7 is Alameda
15 County, the Tesla Power Project is located in
16 Alameda County and therefore would be in their
17 service area. We would need to request -- we may
18 not legally need to request it, but by staff, we
19 would certainly want to request their approval to
20 serve recycled water within the, what's called the
21 territory of Alameda County Zone 7.

22 MR. GALATI: Do you know when the city
23 can tell FPL what specific regulatory approvals
24 are required?

25 MR. BAYLEY: I cannot tell you a date.

1 I know that, through the process of negotiation
2 and through the process of the engineering work,
3 the preliminary engineering, we should be able to
4 identify all approvals and put a schedule to
5 obtaining them all.

6 MR. GALATI: Once a contract were
7 entered into, would a notice provision of 18
8 months allow you sufficient time to meet delivery
9 of water needs?

10 MR. BAYLEY: That's speculation, I don't
11 know at this time.

12 MR. GALATI: I have no more questions
13 for you. I'd like to talk to Mr. Kessler please.
14 Mr. Kessler, you testified that the Tracy water
15 supplies is economically feasible, correct?

16 MR. KESSLER: Yes.

17 MR. GALATI: Do you believe that that
18 supply is available?

19 MR. KESSLER: I believe it will become
20 available before the power plant comes online.

21 MR. GALATI: If the power plant --
22 excuse me. If a buyer of water is willing to buy
23 water, and that water is available, but the seller
24 of water is not willing to sell the water, would
25 you still believe that water is available?

1 MR. KESSLER: No.

2 MR. GALATI: If both buyer and seller
3 are willing to enter into an agreement where the
4 buyer will pay for water and the seller will
5 deliver the water, but somehow the seller is
6 prevented from delivering the water, would you
7 consider that water to be available?

8 HEARING OFFICER GEFTER: Mr. Galati, I
9 think these are hypothetical questions which do
10 not really go to the witness's testimony. This is
11 more a matter of legal argument. I don't know
12 where you're going with this line?

13 MR. GALATI: It's cross-examination.
14 I'm trying to get this witness's determination of
15 what available means. And I think that this
16 witness has testified that the water is available,
17 and I wonder under what conditions the water would
18 not be available, in his opinion.

19 HEARING OFFICER GEFTER: I think the
20 witness testified that the water will be available
21 when the power plant is online.

22 MR. GALATI: I'll withdraw the question.
23 You based a cost estimate on estimating the TDS of
24 the aqueduct water, is that correct?

25 MR. KESSLER: We used the Applicant's

1 numbers for Zone 7, the expected quality. So our
2 cost estimates reflect that quality, yes.

3 MR. GALATI: I thought you testified
4 that you revised that, based on information from
5 Mr. Bayley?

6 MR. KESSLER: What was revised was to
7 reflect that, with respect to the ZLD treatment
8 system, that the capacity in our view would likely
9 be the same capacity. We did not adjust the
10 number for the cost of the ZLD installation. All
11 we did was say that in the best case -- let me
12 just verify this.

13 In the best case for treating the
14 reclaimed water that the size of the system, the
15 capacity of the ZLD treatment system, would be the
16 same as Zone 7. And we also offer that it could
17 be about two and a half million dollars higher in
18 order to meet, on average, a water quality that
19 would be higher than Zone 7's.

20 MR. GALATI: I have no more auestions
21 for Mr. Kessler. May I speak to Ms. Uhlman. Ms.
22 Uhlman, did you do an analysis of using the
23 groundwater as an interim supply?

24 MS. UHLMAN: Yes I did.

25 MR. GALATI: And did you assume a length

1 of time for that interim analysis?

2 MS. UHLMAN: Yes I did.

3 MR. GALATI: And what was that length of
4 time?

5 MS. UHLMAN: The analysis was based on a
6 worst-case scenario, where both the city of Tracy
7 and the Tesla Power Project would be on a peak
8 demand. And I assumed that to occur for a one
9 month or 30-day peak demand period.

10 MR. GALATI: Did you also do an analysis
11 for any sustained interim pumping for a number of
12 months?

13 MS. UHLMAN: I did an initial analysis
14 with average yearly for a year's time, and did not
15 find a significant impact. And that led me to do
16 an analysis of a worst-case scenario, to see what
17 the worst case would be for impact.

18 MR. GALATI: Can you opine whether there
19 would be an environmental impact if there was
20 pumping for more than 12 months?

21 MS. UHLMAN: Please clarify your
22 question?

23 MR. GALATI: If the interim supply were
24 pumped for more than 12 months, can you state
25 today whether there would be an impact?

1 MS. UHLMAN: May I make an assumption
2 before I --

3 MR. GALATI: Please so make.

4 MS. UHLMAN: My assumption is that for
5 the first year of operation that you would be
6 following the schedule of water demand provided by
7 you, and that that is a worst-case scenario. And
8 that the second year of demand would be under
9 average conditions, which would not require the
10 peak demand as you had presented in the table that
11 I reproduced in table five of my testimony.

12 Based on that assumption there would not
13 be significant environmental impact.

14 MR. GALATI: Is there an outside date in
15 which you believe this -- starting from month zero
16 and in accordance with the assumptions you've made
17 there and going for more than two years. Is there
18 an outside range in which you think that -- and is
19 not analyzed or can't say whether there is an
20 environmental impact?

21 MS. UHLMAN: I have not analyzed beyond
22 that.

23 MR. GALATI: Thank you. No further
24 questions.

25 HEARING OFFICER GEFTER: Have you

1 completed your cross-examination?

2 MR. GALATI: Yes.

3 HEARING OFFICER GEFTER: I have a
4 question for Mr. McCloud regarding the water
5 storage tank. As part of your project description
6 I wanted to know how many days water supply could
7 be contained in that water storage tank.

8 MR. MCCLOUD: Due to various
9 meteorological conditions you don't use the same
10 amount of water every year. It's a function of
11 the ambient temperature conditions. So the number
12 that, actually both staff and I have been talking
13 about -- is, the eight million gallons represents
14 slightly more than a day at peak consumption
15 conditions.

16 And just for clarification, peak
17 consumption conditions are the hottest hourly
18 conditions that we've seen at the site. So even
19 on the hottest day it's actually more than a day.
20 Where we'd make the reference to two days is if we
21 look over the course of the year and look at the
22 average water consumption per day when the plant's
23 online, that eight million gallons represents
24 approximately two days of generation at roughly
25 four million gallons a day.

1 That's why there's different numbers
2 being floated around. It really depends on what
3 day you're drawing off of as to how much storage
4 there is.

5 HEARING OFFICER GEFTER: Okay, thank
6 you. Staff, you want to move your exhibit?

7 MS. HOUCK: Yes, staff would move that
8 portions of exhibit 51, 52, 54, and -- well, 51,
9 52, and 544, dealing with water resources, and
10 exhibit 55A be admitted into evidence.

11 MS. HOUCK: What about 65, 66 --?

12 MS. HOUCK: 65, 66 -- 67 refers to
13 reports that are referenced in the FSA exhibit 51,
14 so I will submit whether the Committee just wishes
15 to consider that part of exhibit 51, or admit
16 those exhibits separately.

17 HEARING OFFICER GEFTER: We're going to
18 consider them part of exhibit 51, because those
19 are web page references used by your experts. So
20 67A through 67E are references that refer to
21 testimony in exhibit 51?

22 MS. HOUCK: Yes.

23 HEARING OFFICER GEFTER: And we will
24 just use your references here as part of exhibit
25 51, then. And it won't be separate exhibits. So

1 here we have 65 and 66 and 55A.

2 MS. HOUCK: Yes.

3 HEARING OFFICER GEFTER: Any objection
4 to those exhibits being received?

5 MR. GALATI: No objection.

6 MR. SARVEY: No objection.

7 HEARING OFFICER GEFTER: Portions of
8 exhibits 51, 52, and 54 related to water supply,
9 55A, all of 55A, 65 and 66 are now received into
10 the record.

11 MS. HOUCK: Thank you.

12 HEARING OFFICER GEFTER: All right. Mr.
13 Sarvey has cross-examination. You may ask either
14 panel, Applicant or staff.

15 MR. SARVEY: Mr. Bayley, in your staff
16 report that's dated January 21st, 2003, entitled
17 "discussion of recycled water agreement for the
18 proposed Tesla Power Project", in that staff
19 agreement you state that city staff recognizes
20 that the community does not have the support of
21 the proposed Tesla Power Project due to air
22 quality concerns.

23 Do you still believe that to be true?

24 MR. BAYLEY: Yes I do.

25 MR. SARVEY: Thank you. Mr. Kessler, in

1 your analysis do you conclude that the use of
2 fresh water in this project would be a significant
3 impact to the environment?

4 MR. KESSLER: We consider it to be
5 inconsistent with state policy and LORS.

6 MR. SARVEY: In your analysis that we've
7 just received, soil and water resources appendix
8 table 5A, can you explain to me why the dry
9 cooling option was not included in those cost
10 analyses?

11 MR. KESSLER: Primarily because we
12 didn't have any updated information to add to the
13 dry cooling analysis.

14 MR. SARVEY: Do you feel that the use of
15 dry cooling would solve a lot of the reliability
16 issues that we've discussed here today?

17 MR. KESSLER: We believe that's an
18 option within the realm of possibilities.

19 MR. SARVEY: Do you believe that the use
20 of dry cooling is the most preferred environmental
21 method in cooling for this project?

22 MS. HOUCK: I would object. I'm not
23 sure what Mr. Sarvey means by "most?"

24 MR. SARVEY: I'm sorry, I'll rephrase
25 it. Do you believe that the dry cooling would be

1 the most environmentally preferred method in this
2 project?

3 MR. KESSLER: I can't address the other
4 resource areas, I can only address the water.
5 Certainly, it would conserve the most fresh water
6 of all the options.

7 MR. SARVEY: Okay, thank you, Mr.
8 Kessler. I have one question for the Applicant.

9 MR. KESSLER: I'm sorry, can I restate
10 that?

11 MR. SARVEY: Sure.

12 MR. KESSLER: Obviously, using the 100
13 percent reclaimed water from the city of Tracy
14 would also conserve water, it would be the
15 equivalent to the dry cooling as to conserving
16 fresh water. I'm sorry I had to restate that.

17 MR. SARVEY: That's okay, thanks. This
18 is for the Applicant, any one of you. Would the
19 use of dry cooling eliminate your reliability
20 issues with the recycled water or the fresh water?

21 HEARING OFFICER GEFTER: Mr. Sarvey,
22 could you reframe that question?

23 MR. SARVEY: I'm sorry. Would the
24 implementation of dry cooling in this process
25 eliminate all your reliability concerns?

1 MR. MCCLOUD: I don't believe we've
2 identified a reliability concern with either
3 option. We had --

4 MR. SARVEY: That's what we just
5 discussed.

6 MR. MCCLOUD: -- contended there is not
7 a reliability concern with the Zone 7 option, nor
8 have we indicated that there is a reliability
9 concern with the reclaimed.

10 MR. SARVEY: Oh, you have no reliability
11 concern with reclaimed. Thank you, that's all.

12 HEARING OFFICER GEFTER: Does that
13 conclude your cross-examination?

14 MR. SARVEY: Yes thank you.

15 MR. GALATI: Ms. Gefter, if I can just
16 -- I feel it's only appropriate, I didn't object
17 at the time, but I would like the Committee to
18 direct Mr. Kessler to answer Mr. Sarvey's
19 question. He asked if there was any impacts, and
20 Mr. Kessler answered something different.

21 I didn't want to interrupt his cross-
22 examination, but I think it's only fair that he
23 answer the question.

24 HEARING OFFICER GEFTER: Off the record.
25 (Off the record.)

1 HEARING OFFICER GEFTER: Back on the
2 record. Mr. Sarvey wishes to move two exhibits.

3 MR. SARVEY: 70 and 77 please.

4 HEARING OFFICER GEFTER: Okay. Any
5 objection to the receipt of exhibit 70 or 77?

6 MR. GALATI: No objection.

7 MS. HOUCK: No objection.

8 HEARING OFFICER GEFTER: Exhibit 70 and
9 77, sponsored by Mr. Sarvey, are received into the
10 record. We also have several members of the
11 community who wish to address us today with public
12 comment. Are we finished with your examination?

13 MS. HOUCK: I had two redirect questions
14 for Mr. Bayley, and then Mr. Wong from Zone 7 is
15 here.

16 HEARING OFFICER GEFTER: He's another
17 one of your witnesses?

18 MS. HOUCK: He was a witness that the
19 Applicant had made available yesterday, and I just
20 have three followup questions.

21 HEARING OFFICER GEFTER: I'm sorry, we
22 will take your comments in a few minutes. Go
23 forward with your redirect.

24 MS. HOUCK: Mr. Bayley, has the proposal
25 for the city of Tracy to enter into negotiations

1 with FPL to provide recycled water been presented
2 publicly?

3 MR. BAYLEY: Yes it has.

4 MS. HOUCK: And would the city be
5 proposing recycled water as the permanent water
6 supply to the power plant?

7 MR. BAYLEY: Yes it would.

8 MS. HOUCK: Do you anticipate any
9 reductions in the potable water supply to the
10 citizens of Tracy?

11 MR. BAYLEY: No I do not.

12 MS. HOUCK: And in regards to any costs
13 associated with the water supply that may need to
14 be provided to the power plant, that would be
15 considered an interim water supply, would those be
16 borne by the city or FPL? I'll rephrase that,
17 strike the question

18 HEARING OFFICER GEFTER: Let's go off
19 the record.
20 (Off the record.)

21 HEARING OFFICER GEFTER: Back on the
22 record. You may ask your question, Ms. Houck.

23 MS. HOUCK: Would the city bear any
24 additional cost as a result of they need to supply
25 interim fresh water to the power plant?

1 MR. BAYLEY: The interim water supply
2 would be, the water itself would be free of
3 charge, we would ask FPL to pay the cost for the
4 electricity to pump it out of the ground.

5 MS. HOUCK: Okay, thank you.

6 MR. BAYLEY: And any other costs related
7 to permits, or anything that we would need.

8 MS. HOUCK: Thank you. And can you just
9 restate the capacity that you're testifying under
10 today?

11 MR. BAYLEY: I am testifying as the
12 Deputy Director of Public Works, as a city staff
13 member. I offer no legal opinions. Any of my
14 recommendations would be to the city council for
15 their action.

16 And I believe that the agreement with
17 Florida Power and Light would need to be
18 negotiated as a whole, taking into account the
19 terms that Florida Power and Light seeks and the
20 terms the city seeks.

21 MS. HOUCK: Okay, thank you.

22 HEARING OFFICER GEFTER: Does that
23 complete your redirect?

24 MS. HOUCK: Yes, and I had just two or
25 three questions for Mr. Wong.

1 HEARING OFFICER GEFTER: Mr. Wong, could
2 you please come forward? Sit at this table I
3 think. And Mr. Wong, I believe you were sworn in
4 yesterday, was Mr. Wong sworn in yesterday?

5 COURT REPORTER: Yes he was.

6 HEARING OFFICER GEFTER: So you are
7 still under oath. Okay, Ms. Houck?

8 MS. HOUCK: Mr. Wong yesterday you
9 stated that Zone 7 supports the appropriate use of
10 recycled water, or -- could you restate your
11 position regarding --?

12 MR. WONG: It was a response from Mr.
13 Sarvey that Zone 7 has continued to support the
14 appropriate use of recycled water.

15 MS. HOUCK: And were you present when
16 Mr. Bailley testified that they would be
17 requesting concurrence or approval from Zone 7 in
18 order to provide reclaimed water to the Tesla
19 Power Project?

20 MR. WONG: Yes I was here.

21 MS. HOUCK: Do you believe that Zone 7
22 would have any objections to the city of Tracy
23 providing the reclaimed water to the Tesla Power
24 Project?

25 MR. WONG: No, I don't believe that we

1 would have any objections to that.

2 MS. HOUCK: And if Zone 7 were to be
3 providing water to the Tesla Power Project, who
4 would bear the expenses for any costs associated
5 with the acquisition of easements or
6 infrastructure for delivery of the water?

7 MR. WONG: We would look for the
8 Applicant to bear those costs.

9 HEARING OFFICER GEFTER: Does that
10 complete your examination fo the witness?

11 MS. HOUCK: Yes it does.

12 HEARING OFFICER GEFTER: Do you have
13 cross-examination?

14 MR. GALATI: Yes. Mr. Wong, would the
15 approval to allow Tracy to serve require your
16 board to act?

17 MR. WONG: Well, as Mr. Bayley
18 indicated, we would be offered an opportunity to
19 comment. We would comment anyways as a
20 groundwater management agency when the water
21 recycling permit were reviewed by the regional
22 water quality control board, and in that capacity
23 might offer comments to make sure the groundwater
24 resources were protected.

25 MR. GALATI: Okay, thank you.

1 MS. HOUCK: And just one question.

2 Would that process, to get the permit you just
3 described, be a fairly standard or typical
4 process?

5 MR. WONG: Well, the permit that I was
6 speaking of is the one that the regional water
7 quality control board would have with public
8 hearings and comments that Zone 7 might make would
9 be made in that form.

10 HEARING OFFICER GEFTER: I'm sorry, that
11 doesn't answer the question.

12 MS. HOUCK: Are you familiar with --

13 MR. GALATI: I'll object, it's not his
14 permit.

15 HEARING OFFICER GEFTER: Okay, I just
16 want you to answer the question that Ms. Houck
17 asked you.

18 MR. WONG: Would you repeat the
19 question?

20 HEARING OFFICER GEFTER: She will repeat
21 the question.

22 MS. HOUCK: Well, let me repeat the
23 question. Are you familiar with the process that
24 the city would need to undergo to serve the Tesla
25 Power Project?

1 MR. WONG: Yes.

2 MS. HOUCK: And do you anticipate they
3 would have any difficulty in being able to serve
4 the project?

5 MR. WONG: No.

6 MS. HOUCK: Okay, thank you.

7 HEARING OFFICER GEFTER: Mr. Sarvey, do
8 you have a question of Mr. Wong?

9 MR. SARVEY: No questions.

10 HEARING OFFICER GEFTER: Mr. Wong, I
11 think we are finished with your testimony today.
12 Thank you very much for staying as late as you
13 have, appreciate your patience.

14 MR. WONG: Thank you.

15 HEARING OFFICER GEFTER: Testimony on
16 water supply is now completed for the day, and I
17 hope we can close the topic. Before we do I'd
18 like to hear from members of the public who have
19 been sitting very patiently waiting to address us.
20 And we're going to take public comment.

21 Mrs. Sarvey has been here all day
22 waiting to speak to us. And Mrs. Sarvey, if you
23 would come forward, you can sit at this table
24 here.

25 MS. SARVEY: Susan Sarvey, Clean Air for

1 Citizens and Legal Equality. I have more than one
2 area in water that I'd like to discuss with you
3 today. I'd like to start with that I'm deeply
4 concerned that I have the impression that water
5 has been discussed completely in the atmosphere of
6 pre-commitment.

7 Mr. Geesman obviously is very interested
8 in recycled water, staff is obviously pre-
9 committed to recycled water, to the point that
10 when Ms. Dominguez brought up issues of the slow
11 growth initiative and the ability that will, the
12 impacts that will have on the city's ability to
13 have water, she did not even question Mr. Bayley
14 about this initiative. Not one question.

15 No one here is even interested that we
16 have a slow growth initiative that will not allow
17 any growth for three years. That's assumed. The
18 other assumption that is being made here that's
19 very disturbing to me -- I hear people talking
20 outside of the hearing like Tesla is going to get
21 their license, and oh, they're going to hold on to
22 it for five years, it will be worth money, blah,
23 blah, blah, this isn't going to happen for a long
24 time.

25 GWF was a (snaps fingers) like that,

1 they got their license. What's going to happen if
2 Tesla gets their license, and they immediately
3 build, they immediately build. Now all of a
4 sudden they need this recyclable water, it's not
5 available, and they're getting my potable water.
6 That's not acceptable.

7 And nobody's even discussing this. It's
8 just like let's make the assumption they're not
9 going to be here for five years, we've got plenty
10 of time. That is not necessarily the case.
11 Nobody knows what's really going to happen. You
12 give them that license, they're going to do
13 whatever they want.

14 Now in relation to recycled water
15 itself. Clean Air for Citizens and Legal Equality
16 is very opposed to recycled water and potable
17 water. We believe we need our potable water for
18 drinking and agriculture, and that it needs to be
19 saved for that.

20 We are opposed to recycled water because
21 our city has gone to lengths that you cannot even
22 imagine to make it clear to our citizens that they
23 are not interested or concerned with air quality.
24 Now they want to sell recycled water to this power
25 plant.

1 I am on the GWF oversight committee with
2 Nick Phinhey. And he and I speak on a regular
3 basis and he knows, I am noticed of everything
4 going on. He at no time has indicated to me that
5 this city is involved in the Legionella
6 conferences going on.

7 If we're going to be selling recycled
8 water we need to be going to the Legionella
9 meetings on how to handle recycled water and
10 Legionella. Hell, we have asthma and respiratory
11 problems in Tracy, we don't need Legionella.

12 And I'm not willing to accept that they
13 are going to have such a clean plant that they
14 don't need to go to the Legionella conference.
15 I've heard no discussion of friants. And what
16 I've been learning about friants lately is
17 extremely disturbing.

18 I live in a high dairy community. A lot
19 of cattle. Not to mention what it can do to
20 humans when they get that flesh-eating bacteria.
21 All of these are things that are associated with
22 recycled water.

23 I obviously can't count on my city to
24 educate themselves to the health risks associated
25 with the evaporation and vapor cloud that floats

1 over my community as a result of recycled water.

2 So I'm requesting a condition where you
3 will assign an outside party who is an expert in
4 these areas -- friants, Legionella and anything
5 else that comes out of that vapor cloud that is
6 going to oversee that that cloud is clean, and
7 that we are not at risk.

8 I am not taking the city's word for it,
9 and I'm not taking FPL's. I want an outside,
10 independent party who's going to tell me I'm safe.
11 And when you were talking about a dairy
12 association as huge as the one in Tracy, you are
13 talking a lot of cows. I'm not even talking about
14 range cows, just dairy cows. A frightening
15 number.

16 These are very important issues. I
17 believe when the developers become aware of the
18 amount of potable water that is suddenly available
19 to be passed around they are going to be
20 infuriated, because they can't get water to build
21 their homes.

22 They've had homes that they built that
23 did not immediately get to be sold because they
24 had no water available for awhile. And now
25 suddenly we have excess water that we can just

1 give away.

2 I submit that when the public and the
3 community finds out what's going on in relation to
4 this recycled water they are going to be concerned
5 about the health effects, they are going to be
6 concerned about the fact that potable water is
7 being made available.

8 I think you can count on hearing from
9 Tracy Tax Watch. You will probably be hearing
10 from TRACQ, which already has successfully put an
11 initiative on the ballot that passes slow growth
12 initiative, because the council and the mayor
13 refused to listen to us.

14 Many of them the same people who were in
15 office when we had that initiative, because they
16 would not listen. You will have CACL (sp), you
17 will have a wide variety of groups that are up in
18 arms about this water issue, which could result in
19 a voter initiative to stop you from touching our
20 potable water, and subjecting us to recycled water
21 without measures that will protect us.

22 So, to sit here and discuss this like
23 they aren't going online for a long time, like
24 they don't have any issues at all, they just have
25 recycled water coming, coming, coming, because

1 we're going to build, build, build, we have a slow
2 growth initiative, they can't build for awhile.

3 We have a community that is dedicated to
4 air quality. Very strongly dedicated to air
5 quality, and has shown that over and over again.
6 You have problems, and you should, in all good
7 conscience, be looking at dry cooling. You're
8 supposed to look at all three alternatives, and
9 pick out which one is the best one.

10 In terms of reliability and not
11 alienating the community and putting us at risk,
12 you've got to go for dry cooling, and you've never
13 discussed it. You have not even thought about it.
14 So you need to think carefully, because you can do
15 whatever you want in this room, but look at the
16 recall, you can't stop the voters from putting it
17 on the ballot. Thank you very much.

18 HEARING OFFICER GEFTER: Ms. Sarvey,
19 have you looked at public health condition one,
20 which deals with Legionella?

21 MS. SARVEY: I didn't understand it
22 completely. My concern is that we need to have
23 someone who is participating in the ongoing
24 research and development for the implementation of
25 protection to our communities.

1 HEARING OFFICER GEFTER: All right.
2 when we discuss public health I'll expect you'll
3 be there too?

4 MS. SARVEY: Yes I will, thank you very
5 much.

6 COMMISSIONER GEESMAN: I guess I would
7 point out that we are considering dry cooling, and
8 Mr. Powers submittal is part of our evidentiary
9 record. The staff testimony indicated they have
10 evaluated dry cooling as well. That will all be
11 considered in our decision.

12 And I would also say that I do believe
13 that you're right, you should assume that any
14 project that the Energy Commission licenses will
15 proceed immediately to construction. I don't
16 think you should take any false comfort, if you
17 will, in the fact that some Applicants have
18 elected to delay the commencement of construction.

19 And I would also say, as one of the five
20 Commissioners, it's my firm hope that all projects
21 that ultimately receive a license from the Energy
22 Commission do promptly proceed to construction.

23 It's extremely important from a
24 statewide energy supply demand balance, and also
25 extremely important from an air quality in terms

1 of replacing dirty plants with clean plants.

2 HEARING OFFICER GEFTER: Thank you.

3 Also, Ena Aguirre? Is that how I --? I'm sorry,
4 come up and spell your name, and tell us how to
5 pronounce it.

6 MS. AGUIRRE: Good afternoon, my name is
7 Ena Aguirre. I now --

8 HEARING OFFICER GEFTER: Please spell it
9 for the record.

10 MS. AGUIRRE: Oh, Aguirre is A like in
11 apple, G like in good, u-i-r-r-e. And Ena is E-n-
12 a. And I do have some property in Tracy, but
13 after six years of living here I moved to
14 Stockton. But I do still keep in touch.

15 I have tried to listen to everything
16 that's being said today, and one of the feelings
17 that I have about this project is the fact that
18 FPL, Florida Power and Light, they don't seem to
19 have any documents or anything available that a
20 person can grab hold of or look at or say okay,
21 this is really what they are going to have visavis
22 water that they know that they are going to have
23 available.

24 And that rather concerned me when I was
25 sitting there. But that's just, you know, that's

1 just me.

2 HEARING OFFICER GEFTER: Okay, just a
3 minute. Off the record.
4 (Off the record.)

5 HEARING OFFICER GEFTER: Back on the
6 record.

7 MS. AGUIRRE: So that is a concern that
8 I have been feeling, especially today. The other
9 thing that I am really concerned about is that
10 there was a statement made by our Commissioner
11 here that all the companies that get this approval
12 go immediately to construction.

13 I believe that if this is what the
14 Commission wants then they have to put it in the
15 contract, that the power plant should be, you
16 know, developed within the next month, or six
17 months, or a year, something like that. Unless
18 there's that condition in there a lot of us know
19 that that's not necessarily what happened, even
20 though this is the best thing that the Commission
21 would like to see.

22 So, unless that is part of the contract
23 FPL can wait. So I think that this is something
24 that people should think about. I also am
25 concerned about the fact that -- and again, this

1 is just me understanding from listening, okay --
2 that although the tower that they're going to
3 build there to hold their water is going to have
4 over eight million gallons of water. That amount
5 of water will be used in two days. And maybe I'm
6 wrong --

7 HEARING OFFICER GEFTER: Off the record
8 again.

9 (Off the record.)

10 HEARING OFFICER GEFTER: Back on the
11 record.

12 MS. AGUIRRE: So I am a little concerned
13 about the fact that that amount of water is going
14 to be used day in and day out, and how do we
15 replenish that. I mean, I still have a concern
16 about that one. And I just would like to put in
17 context why some of us are so concerned about
18 water.

19 Those of us who have lived here, and who
20 live here now, know that there are two huge big
21 projects coming online within the next six months
22 to a year. And one is the gateway on 11 Elamors
23 (sp). That's going to be a huge big thing that's
24 going to require a lot of water. That project has
25 been on the works for ten, 12 years. So that is

1 going to start within the next six months to a
2 year.

3 Then we look at the other side of the
4 city, which is Tracy Hills, which is another huge
5 project that has been, you know, on the works for,
6 what, 10-15 years. And they are now getting ready
7 to start, I think is what, 10,000 homes, or I mean
8 you know some huge amount of water that they are
9 going to need too.

10 So I think that it's important that,
11 when you listen to some of us, that you see that
12 the concern that some of us have is that we do try
13 to put it in context with everything else that's
14 going on in the city.

15 And we would not like to see that, you
16 know, in any way the Commission gets the idea, or
17 the assurances, that there will be that water
18 there. Unless all of this is in writing from
19 every single group that has any say-so on the
20 water before.

21 So it looks to me like you're not going
22 to need only one more meeting, I think you're
23 going to need another one after that, maybe a
24 couple of months later to give all these guys
25 here, men and women -- you know, guys is just a

1 word we used to use a long time ago for
2 everybody -- you know, to give everybody a time to
3 put all of those agreements in writing, so
4 everybody knows exactly what it is that is being
5 talked about.

6 Otherwise this sounds very iffy, and is
7 kind of, you know, not very concrete. And then
8 the very last thing that I would like to say is
9 that I think that Carole made some very good
10 suggestions, and so did Susan.

11 And I think the idea of you all
12 exploring some kind of an advisory committee, that
13 might be made up of whoever, you know, and I'm
14 glad that the city council is now enlightening
15 about environmental issues, and this is something
16 that the community brought to them, and now they
17 are really into it, or they are trying to get into
18 it, and that's good for all of us who live in San
19 Joaquin County.

20 But, you know, I think that some kind of
21 an advisory committee of some type should be put
22 together, and that should be able to help in some
23 ways, simply because, you know, people who live in
24 the community do know, and we all know that the
25 Commission in its wisdom -- and I sometimes have

1 wondered about their wisdom, you know -- has
2 approved what, three power plants now, or is the
3 the fourth?

4 I have forgotten, I started three or
5 four years ago with Bob here. You know, a lot of
6 power plants have been approved in this
7 neighborhood, and there's still that concern about
8 what the air quality really is, and is going to be
9 once all those power plants are going to be going.
10 Okay, thank you very much for listening to me.

11 HEARING OFFICER GEFTER: Thank you for
12 expressing your concerns to us. Off the record.
13 (Off the record.)

14 HEARING OFFICER GEFTER: Back on the
15 record. Before we close for today, I want to go
16 over a few items that remain open. I'm going to
17 ask Applicant to move exhibits 41 and 156,
18 regarding traffic and transportation. I know we
19 discussed that during the testimony on those
20 topics, and I don't have a record that they were
21 actually received.

22 MR. GALATI: I'd like to move exhibit 41
23 and 156 into the record.

24 HEARING OFFICER GEFTER: Any objections?

25 MS. HOUCK: No objection.

1 HEARING OFFICER GEFTER: So those
2 exhibits are now in the record. Several topics
3 remain open for additional information. The topic
4 of traffic and transportation remains open to
5 complete the rewrite of the conditions trans 1, 4,
6 and 6. And we will get that information by the
7 18th.

8 The parties will consult and come
9 forward with language they agree on. The same
10 will be true for the topic of worker safety and
11 fire protection.

12 We are looking for two new conditions.
13 One regarding the agreement on the water tender
14 truck and the automatic aid agreement. And the
15 second would be a new draft regarding the
16 defibrillator that will be supplied to the fire
17 district.

18 The other topic that remains open is
19 land use, for rewrite on land 7, that we discussed
20 during the testimony on that topic. Biology
21 remains open for testimony on the shrew, the U.S.
22 Fish and Wildlife witness will be available on the
23 18th to discuss that topic.

24 Also we discussed rewriting some
25 language in conditions bio 5 regarding items 13

1 and 14, and we will look for that rewrite also on
2 the 18th. Water remains open for testimony on the
3 shrew.

4 If you need to bring witnesses on that
5 topic on the 18th, as well as information that the
6 Applicant has agreed to provide to staff and the
7 city regarding terms of agreements with the water
8 districts in Kern County.

9 Anything else? Hearing nothing, the
10 hearing is adjourned.

11 (Thereupon, at 3:20 p.m. the hearing was
12 adjourned.)

CERTIFICATE OF REPORTER

I, JAMES RAMOS, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Hearing; that it was there after
transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
workshop, nor in any way interested in outcome of
said workshop.

IN WITNESS WHEREOF, I have hereunto set
my hand this 23rd day of September, 2003.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345